रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05

REGD. NO. D. L. (N) 04/0007/2003–05

भारत का राजपत्र
The Gazette of India

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साप्ताहिक
WEEKLY

सं. 1] नई दिल्ली, दिसम्बर 30, 2012—जनवरी 5, 2013, शनिवार/पौष 9—पौष 15, 1934
No. 1] NEW DELHI, DECEMBER 30, 2012—JANUARY 5, 2013, SATURDAY/PAUSA 9—PAUSA 15, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 27 दिसम्बर, 2012

का. आ. 1.—केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार, गृह (ग्रेड-V) विभाग, जयपुर की अधिसूचना सं. एफ. 19(34)/गृह-5/2012 दिनांक 26 सितंबर, 2012 द्वारा प्राप्त सहमति से पुलिस स्टेशन टपूकड़ा, जिला-अलवर (राजस्थान) में भारतीय दंड संहिता 1860 (1860 का अधिनियम सं 45) की धारा 363, 364 और 366 के अधीन पंजीकृत मामला सं. 285/12 दिनांक 8-6-2012 का तथा उपर्युक्त उल्लिखित अपराध के संबंध में या उससे संबद्ध प्रयास, दुष्प्रेरण तथा षड्यंत्र तथा उसी संव्यवहार के क्रम में या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार सम्पूर्ण राजस्थान राज्य के सम्बन्ध में करती है ।

[फा. सं. 228/60/2012-एवीडी-II]
एम. पी. रामाराव, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 27th December, 2012

S. O. 1.—In exercise of the powers conferred by sub-section(1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Rajasthan, Home (Gr. V) Department. Jaipur vide Notification No. F. 19(34)Home-5/2012 dated 26th September, 2012, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Rajasthan for investigation of case No. 285/12 dated 08-06-2012 under Sections 363, 364 and 366 of Indian Penal Code 1860 (Act No. 45 of 1860) registered at Police Station Tapookara, District Alwar (Rajasthan) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 228/60/2012-AVD-II]
M. P. RAMA RAO, Under Secy.

प्रबंधक श्री मोहन लाल गुप्ता (जन्म तिथि : 01-12-1956) को उनकी नियुक्ति की अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा देना बैंक के अधिकारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक, जो भी पहले हो, देना बैंक के निदेशक मंडल में अधिकारी कर्मचारी निदेशक नियुक्त करती है ।

[फा. सं. 6/14/2012 बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 1st January, 2013

S. O. 5.—In exercise of the powers conferred by clause (f) of sub-section 3 of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government after consultation with the Reserve Bank of India, hereby appoints Shri Mohan Lal Gupta (DoB: 01-12-1956), Senior Manager, Dena Bank, as Officer Employee Director on the Board of Directors of Dena Bank for a period of three years from the date of notification of his appointment or until he ceases to be an officer of the Dena Bank or till further orders, whichever is the earliest.

[F. No. 6/14/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(डाक विभाग)

नई दिल्ली, 26 दिसम्बर 2012

का. आ. 6.—राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में केंद्र सरकार, डाक विभाग के अधीनस्थ कार्यालय पोस्टमास्टर जनरल (विदेश डाक एवं विपणन) का कार्यालय, विदेश डाक भवन मुंबई-400001 जिनके 80 प्रतिशत अधिकारियों एवं कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है ।

[फा. सं. 11017-1/2011-रा.भा.]

मीरा हाण्डा, उप महानिदेशक (फिलैटली/राजभाषा)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Posts)

New Delhi, the 26th December, 2012

S. O. 6.—In pursuance of Rule 10 (4) of the Official Language (Use for Official Purposes of the Union) Rule 1976, the Central Government hereby notifies office of the Postmaster General (Foreign Post and Marketing), Videsh Dak Bhawan, Mumbai-400001 of the Department of Posts where 80% staff have acquired the working knowledge of Hindi.

[F. No. 11017-1/2011-OL]

MEERA HANDA, Dy. Director General (Philately/OL)

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

(पूर्ति प्रभाग)

नई दिल्ली, 27 दिसम्बर, 2012

का. आ. 7.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, वाणिज्य एवं उद्योग मंत्रालय, वाणिज्य विभाग (पूर्ति प्रभाग) के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप निम्न कार्यालय को एतद्द्वारा अधिसूचित करती है :–

1. निदेशक (गुणता आश्वासन) का कार्यालय,
   केन्द्रीय सदन, तृतीय तल (डी एवं एफ स्कंद)
   17 वां मुख्य मार्ग, कोरमंगला
   द्वितीय ब्लॉक, बैंगलूरु- 560034

[फा. सं. ई-11016/6/2004-हिन्दी]

अनुराग सक्सेना, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(SUPPLY DIVISION)

New Delhi, the 27th December, 2012

S. O. 7.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976 the Central Government hereby notifies the following office of the Ministry of Commerce & Industry, Department of Commerce (Supply) where more than 80% Employers have attained working knowledge of Hindi.

1. Office of Director of Quality Assurance,
   Kendriya Sadan, 3rd Floor
   17th Main Road, Kormangla, Second Block
   Bangluru - 560034

[F. No. E-11016/6/2004-Hindi]

ANURAG SAXENA, Jt. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 19 दिसम्बर, 2012

का. आ. 2.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन प्रवर्तन निदेशालय के क्षेत्रीय कार्यालय हैदराबाद को जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है ।

[फा. सं. ई-11017/1/2012-एडी(हिन्दी-4)]
चन्द्रभान नारनौली, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 19th December, 2012

S. O. 2.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976 the Central Government hereby notifies the Hyderabad regional office of the Directorate of Enforcement under the Department of Revenue, where more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11017/1/2012-AD(Hindi-4)]

CHANDERBHAN NARNAULI, Director (OL)

(औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण)

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 3.—इस प्राधिकरण की दिनांक 05 दिसंबर, 2011 की समसंख्यक अधिसूचना के क्रम में रेल डिब्बा कारखाना कपूरथला कार्यालय महाप्रबन्धक कार्मिक रेडिका/कपूरथला में स्थायी रूप से कार्यरत निजी सचिव श्री रधुबीर सिंह को संशोधित वेतनमान पी बी-3 रु 15600-39100+6600 प्रतिमाह के वेतनमान में प्रमुख निजी सचिव के रूप में की गई प्रतिनियुक्ति की अवधि पूर्व निबन्धनों और शर्तों सहित दिनांक 01-01-2013 से अगले एक वर्ष दिनांक 31-12-2013 तक या अगले आदेश तक या इस प्राधिकरण की समाप्ति तक, जो भी पूर्व घटित हो, बढ़ा दी गई है ।

[फा. सं. 1/1/2010-प्रशा]
दया नन्द, अवर सचिव

(APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION)

New Delhi, the 20th December, 2012

S. O. 3.—In continuation of this Authority's Notification of even number dated 5-12-2011, the term of deputation of Shri Raghuvir Singh, a permanent PS of Rail Coach Factory, Kapurthala, as Principal Private Secretary (PPS) in this Authority on deputation basis in the pre-revised Pay Scale of Rs.10,000-325-15,200(Revised Pay Band PB-3 Rs. 15600-39100+6600 Grade Pay) is extended for a further period of one year w.e.f .01-01-2013 to 31-12-2013 or till abolition of this Authority or until further orders, whichever is earlier, on the same terms and conditions.

[F. No. 1/1/2010-Admin.]

DAYA NAND, Under Secy.

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 27 दिसम्बर 2012

का. आ. 4.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खण्ड (ग) के उपखण्ड (i) के उपबंध पंजाब नैशनल बैंक पर लागू नहीं होंगे, जहाँ तक उनका संबंध बैंक के अध्यक्ष एवं प्रबंध निदेशक श्री के. आर. कामथ का सूक्ष्म एवं लघु उद्यम के ऋण गारंटी निधि न्यास के न्यासी बोर्ड में सदस्य के रूप में उनके नामित होने से है ।

[फा. सं. 13/1/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

(Department of Financial Services)

New Delhi, the 27th December, 2012

S. O. 4.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Punjab National Bank in so far as it relates to the nomination of Shri K.R. Kamath, Chairman & Managing Director of the Bank for nomination as a Member on the Board of Trustees of Credit Guarantee Fund Trust of Micro and Small Enterprises (CGTMSE).

[F. No. 13/1/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 1 जनवरी, 2013

का. आ. 5.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 9 के उप-खण्ड (1) और (2) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, देना बैंक के वरिष्ठ

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 8.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 7920 (भाग 1): 2012 सांख्यिकी पारिभाषिक शब्दावली तथा चिन्ह भाग 1 सामान्य सांख्यिकी की शब्दावली तथा संभावित प्रयोग मे आने वाली शब्दावली (तीसरा पुनरीक्षण)	–	30 नवम्बर 2012

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एम एस डी /जी-8 अधिसूचना]

निर्मल कुमार पाल, वैज्ञानिक 'एफ' एवं प्रमुख (प्रबन्ध एवं तंत्र)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 17th December, 2012

S.O. 8.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which is given in the Schedule hereto annexed has been established on the date indicated against each :

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Eatablished	No. and Year of the Indian Standard, if any, Superseded by the New Indian Standard	Date Established or Date of Eatablishment
(1)	(2)	(3)	(4)
1.	IS 7920 (Part 1) :2012 Statistics - Vocabulary and Symbols - Part 1 General statistical terms and terms used in probability (Third revision)	-	30 November 2012

Copies of the above Standard are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and its Regional Offices at Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangalureu, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MSD/G-8 Notification]

NIRMAL KUMAR PAL, Scientist 'F' & Head (Management & Systems)

नई दिल्ली, 20 दिसम्बर, 2012

का.आ. 9.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 16088 : 2012 स्वचालित स्प्रिंकलर अग्निशमन तंत्र के लिए क्लोरीनकृत पॉलीविनायल क्लोराइड (सीपीवीसी) पाइप-विशिष्टि	-	30 नवम्बर 2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ सीईडी/राजपत्र]

डी. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 20th December, 2012

S.O. 9.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each :

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Eatablished	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 16088: 2012 Chlorinated Polyvinyl Chloride (CPVC) Pipes for Automatice Sprinkler Fire Extinguishing System-Specification	-	30 November 2012

4760 GI/12-2

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. CED/Gazette]

D. K. AGRAWAL, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 28 दिसम्बर, 2012

का.आ. 10.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 3008 : 2012 जूते काले करने के ब्रश-विशिष्टि (चौथा पुनरीक्षण)	-	30 नवम्बर 2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं । भारतीय मानकों को http://www.standardsbis.in द्वारा इंटरनैट पर खरीदा जा सकता है ।

[संदर्भ सीएचडी 24/आईएस 3008]

एस. एन. चटर्जी, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन विभाग)

New Delhi, the 28th December, 2012

S.O. 10.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl.No.	No. and Year of the Indian Standard Eatablished	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 3008: 2012 Brushes, Shoe Blacking- Specification (Fourth Revision)	-	30 November 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standard can be made at :http://www.standardsbis.in

[Ref. CHD 24/IS 3008]

S. N. CHATTERJEE, Scientist 'F' & Head (CHD)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 11.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 175/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/147/2000-आई आर (बी-I)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 5th December, 2012

S. O. 11.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 175/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 5-12-2012.

[No. L-12012/147/2000-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

No. CGIT/LC/R/175/2000

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Pramod Kumar Mishra,
C/o Shri S. N. Mishra, H.No. 3544/2,
Subhash Ward, Katara Basti,
Nr. Gupta Printing Press, Adhartal,
Jabalpur .....Workman

Versus

The Assistant General Manager,
Region-1, State Bank of India,
Zonal Office, Marhatal,
Jabalpur .....Management

AWARD

Passed on this 15th day of November, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/147/2000-IR(B-I) dated 11-9-2000 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of State Bank of India, Region-I, Jabalpur (MP) in terminating the services of Shri Pramod Kumar Mishra from Marathal Branch w.e.f. 8-2-1998 is justified ? If not, what relief the workman is entitled ?"

2. The case of the workman, in short, is that Shri Pramod Kumar Mishra was initially appointed as messenger on 1-1-93 and worked continuously till 8-2-1998 as a daily rated employee. He was terminated without any notice and without payment of compensation as required under Section 25-F of the Industrial Dispute Act, 1947 (inshort the Act, 1947). He worked more than 240 days in every twelve calendar months. His termination is a retrenchment under Section 2(oo) of the Act, 1947. The management has also not followed the provision of Section 25-G and H of the Act, 1947 and Rule 77 and 78 of the Industrial Dispute (Central) Rules, 1957. The termination of the workman amounts to victimization and unfair labour practice. He is unemployed after his termination and could not get any job inspite of best efforts. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement. The case of the management, inter alia is that the workman was engaged as casual worker in the State Bank of India (in short SBI) Marhatal Branch, Jabalpur. He was engaged intermittently subject to availability of work. It is stated that in the year 1992 he worked for one day, he worked 269 days in 1993, 297 days in 1994, 206 days in 1995, 317 days in 1996 and till Nov. 1997 he worked 238 days. It is stated that firstly he was engaged on purely contract and on daily wages basis and his engagement comes under the purview of Section 2(oo) (bb) of the Act, 1947. He is not entitled to any retrenchment compensation under Section 25-F of the Act, 1947 as his service was on contractual basis. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of both the parties, the following issues are framed for adjudication—

I. Whether the action of the management in terminating the services of Shri Pramod Kumar Mishra w.e.f. 8-2-1998 is justified ?

II. To what relief the workman is entitled ?

5. **Issue No. I**

It is evident from the pleadings of the parties that following facts are admitted by them.

1. The workman Shri Pramod Kumar Mishra was engaged by the management Bank on casual and daily rated basis.

2. There is no paper of any written contract between the management and the workman nor there in any oral evidence of any terms of contract.

3. The workman has not been given any notice nor paid any retrenchment compensation as provided under Section 25-F of the Act, 1947.

6. Now the important point for consideration is as to whether the engagement of the workman shall be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date with reference. According to workman, he was working continuously from 1-1-1983 to 8-2-1988 to attract the provision of Section 25-B of the Act, 1947. Thereafter he was terminated without any notice and without any retrenchment compensation under Section 25-F of the Act, 1947. On the other hand, the management has contended that the workman was engaged on daily casual basis and on contractual basis. His case is attracted under Section 2(oo) (bb) of the Act, 1947. It is stated that the workman engaged from December 1992 till Nov. 1997 intermittently. The period of each year is specifically mentioned in the pleading but there is no denial that the workman was engaged 240 days in twelve calendar months preceding the date with termination or reference.

7. Now the evidence of the workman is to be examined to determine the point for consideration. The workman Shri Pramod Kumar Mishra is examined in the case. He has supported his case in his evidence that he was engaged w.e.f. 1-1-1993 continuously till 8-2-1998. He has stated that during the period of 12 calendar months he had worked more than 240 days. He has stated that he had been paid bonus of the said period. He has stated that no notice nor any retrenchment compensation was paid to him and junior Shri Rekhamlal and Sudama Prasad are till working. He has been cross-examined at length. He has admitted in cross-examination that the was engaged on casual basis. There is no cross-examination on the point that he was engaged on contractual basis or he had not worked 240 days in twelve calendar months preceding the date of termination. His evidence shows that he was engaged on casual basis as daily rated. His evidence further shows that there was no contract between the management and the workman as has been alleged by the management. It also appears that he worked more than 240 days in each year specially 240 days in twelve calendar months preceding the date of termination. His evidence shows that the provision of Section 25 B(2) of the Act, 1947 is attracted and he was deeemed to be retrenched employee under Section 2(oo) of the Act, 1947. Admittedly no notice or compensation was paid prior or after termination and therefore the provision of Section 25-F of the Act, 1947 is violated.

8. The workman has also adduced documentary evidence in support of his case which are admitted by the management. Exhibit W/1 is a letter dated 16-4-99 sent by Labour Enforcement Officer to the workman for payment of bonus for the period from 1-1-93 to 7-2-98. This is filed to show that he was continuously employed till 7-2-98 and not till Nov.1997. This letter further shows that he was employed as temporary employee. This letter is admitted by the management. Exhibit W/2 is the letter dated 31-3-1999 issued by the Branch Manager to the workman for payment of bonus of the period from 1-1-93 to 7-2-98. This letter is also admitted by the management. This is filed to show that the facts stated by the workman is corroborated that he was engaged till 7-2-1998 but the management has not come with a fair case and has stated that he was engaged till Nov. 1947. It is clear that the documentary evidence also establishes the case of the workman that he was engaged till 7-2-1998 and was terminated on 8-2-1998. Thus the story of the workman is to be accepted.

9. On the other hand the management has also adduced oral and documentary evidence. The management has admitted in his pleading that in the year 1997 till November the workman had worked 238 days in the year 1996 from January to December he worked 317 days. The management has concealed the fact in the pleading that how many days he worked only in December 1996 to calculate 240 days in twelve calendar months preceding the date of termination. The management has also not denied the fact that the workman has not worked 240 days in twelve calendar months preceding the date of termination. Thus it is itself clear that the provision of Section 25 B(2) of the Act, 1947 is attracted. However the evidence of the management is to be examined carefully. Shri T. Subbarao is working as Branch Manager in the SBI at Marhatal, Jabalpur. He has stated that the workman was engaged as purely temporary casual worker subject to availability of work. He has stated that the workman had not completed 240 days prior to the date of termination as mentioned in the reference. This fact is not corroborated from the pleading of the management where it is stated that in the year 1997 till November he worked 238 days and in the year 1996 he had worked 317 days. It is clear that for calculating the work done in twelve months, December 1996 is to be taken in account but the management has concealed this fact and has not stated as how many days he worked in December 1996. The management witness has stated in his evidence that he has seen record as to how many days the workman has worked for the management. This is clear that the case of the workman that he worked more than 240 days in twelve months preceding the date of termination is acceptable and believable. This witness has stated at para 7 and 9 that the workman was paid bonus of the period he worked. Thus his evidence also supports the case of the workman.

10. The management has also filed documents which are also admitted by the workman. Exhibit M/1 is the same letter which is Exhibit W/1. The relevancy of the document is already discussed earlier. This ducument rather proves the case of the workman. Exhibit M/2 is the photocopy of the Banker's cheque whereby the bonus was paid to the

workman. This further supports the case of the workman that bonus was paid of the period indicated in Exhibit M/1 i.e. of the period from 1-1-93 to 7-2--98. Exhibit M/3 is the same letter of the branch manager for intimation to the workman for payment of bonus. This letter is also filed by the workman which is Exhibit W/2. Thus these documents go to show that the workman was engaged from 1-1-93 to 7-2-98 which is the case of the workman. The documents of the management also corroborates the case of the workman. This issue is decided in favour of the workman and against the management.

11. **Issue No. II**

It is evident from the discussion made above that the action of the management in terminating the workman w.e.f. 8-2-1998 is not justified and admittedly the provision of section 25-F of the Act, 1947 is not complied. The workman has pleaded that after termination he is unemployed. This fact is corroborated in his evidence. There is no evidence in rebuttal nor the management has cross-examined the workman on the point of gainful employment. The management is directed to reinstate the workman with full back wages. The reference is accordingly answered.

12. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 12.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत ओवरसीज बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, न. 1 नई दिल्ली के पंचाट (संदर्भ संख्या 144/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/438/2000-आई आर (बी-I)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2012

S. O. 12.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 144/2011) of the Central Government Industrial Tribunal-cum-Labour Court No.1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Bharat Overseas Bank Ltd. and their workman, received by the Central Government on 5-12-2012.

[No. L-12012/438/2000-IR (B-I)]

SURENDRA KUMAR, Section Officer

4760 GI/12-3

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 144/2011

Mrs. Kusum Puri,
C/o Shri P.K. Chopra
4B/54, Rajendra Nagar,
New Delhi-110060 .....Workman

Versus

The General Manager,
Bharat Overseas Bank Ltd.,
"Habeeb Towers" 756,
Anna Salai,
Chennai-600002 .....Management

AWARD

On 15-3-1977, Ms. Kusum Puri joined as clerk in Bharat Overseas Bank Ltd. (hereinafter referred to as the bank). She proceeded on maternity leave, which expired on 4-1-1983. She sought extension of her maternity leave vide letter dated 12-1-1983, which request was not granted since her application was not supported by medical certificate. On 17-4-1983, she again applied for extension of leave. The bank advised her to appear before Dr. Harvinder Kaur for her medical check up. Her medical examination revealed that she was suffering from acute pelvic inflammation with general debility. Doctor advised her rest for three weeks and as such, leave from 27-4-1983 to 23-5-1983 was sanctioned on loss of pay, since there was no leave to her credit. On expiry of leave, she reported for duty on 24-5-1983. She again applied for leave on 20-10-1983 with effect from 1-11-1983 to 6-11-1983. Her application was forwarded to Head Office,which was rejected due to short notice. She was communicated in that regard vice telegram dated 28-10-1983. She gave another application dated 31-10-1983 for extension of her leave for a period of one month with effect from 7-11-1983. Bank called upon her to submit her explanation for her unauthorized absence with effect from 1-11-1983. It was impressed upon her that disciplinary action would be initiated in the event of her failure to submit explanation within seven days. She deliberately avoided to receive the letter sent by post. The postal article was returned with the remarks 'out of station'. She again applied for extension of her leave from 6-12-1983 to 5-1-1984 vide letter dated 4-12-1983. It was followed by another letter dated 4-1-1984, where she sought extension of leave from 6-1-1984 to 5-2-1984.

2. Vide letter dated 7-1-1984, the bank called upon her to report for duties, besides impressing upon that disciplinary action would be initiated for her unauthorized absence from duty. This notice was duly received by her. However, she opted not to report for duties or to respond to the notice. Another notice dated 22-12-1984 was sent, calling upon her to explain as to why penalty specified in Awards and Settlements should not be imposed upon her. The notice was received by her on 7-1-1985. She neither reported for duties not sent any reply. Her unauthorized absence exceeded a period of 516 days as on March 95. Another notice dated 2-4-1985 was sent, calling up her to report for duties within 30 days from receipt of the notice, with a stipulation that in the event of her failure to comply, she would be deemed to have voluntarily retired from services of the bank on expiry of the notice period. She again deliberately avoided to accept that notice and it was received back undelivered. On 9-7-1985, similar notice was sent, which was received by her. On 20-7-1985, she sent a reply detailing therein that she would approach the bank and discuss the matter on 10-8-1985, Neither she visited the bank for the alleged discussion nor joined her duties. On 7-8-1985, she wrote a letter expressing her inability to join dutes immediately. Since she did not join her duties in compliance of notice dated 2-4-1985 and 9-7-1985, she was deemed to have voluntarily retired from services of the bank.

3. After a lapse of four years, she wrote a letter to the bank on 29-3-1989 requsting to take her back on duty. Her request was declined vide letter dated 19-4-1989, showing inability to consider her request for re-employment. Vide letter dated 2-4-1998, she requested the bank to settle her dues. She was advised to approach the bank for settlement of her dues but to no avail. Thereafter, she raised an industrial dispute before the Conciliation Officer. Since the bank contested her claim, conciliation proceedings ended into a failure. On consideration of the failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/438/2000-IR (B-I), New Delhi dated 11-4-2001, with following terms:

> "Whether the action of the General Manager, Bharat Overseas Bank Ltd. PO Box No. 4507. Oxford House, Mount Road, Chennai, Pin-600006 and the Branch Manager, Bharat Overseas Bank Ltd. Karol Bagh branch, Arya Samaj Road, New Delhi in stopping from services to Mrs. Kusum Puri, Clerk-cum-Cashier with effect from 10-8-1985 treating her as voluntarily retired and not paying her final dues till date is justified? If not,what relief and benefits she is entitled?"

4. Claim statement was filed by Ms. Kusum Puri, stating that she joined the bank as clerk on 15-3-1977. She was married and granted maternity leave, which expired on 23-3-1983. Thereafter she applied for extension of leave, which application remained un-replied by the bank. She developed certain medical complications after delivery and was not in a position to join duties. She applied for leave, supported by medical certificate. She was referred to the Bank's doctor who also supported the necessity for extension of leave. Registered letter dated 9-7-1985 was received by her on 20-7-1985 and thereafter she reported for duties on 10-8-1985, but was not permitted to resume duties. She had been regularly requesting the bank to allow her to join duties but without any success.

5. She agitates that her services were done away without any explanation or service of charge sheet on her or holding any enquiry Termination of her service is illegal as provisions of section 25F of the Industrial Disputes Act, 1947 (in short the Act) have not been complied with. Her services cannot be terminated abruptly and arbitrarily. She claims that an award may be passed reinstating her in services of the bank with continuity and full back wages.

6. The bank demurred her claim pleading that she ceased to be an employee of the bank in August, 1985, while she approached the Conciliation Officer in July, 1999. She presented a stale claim and is not entitled to any indulgence. She proceeded on maternity leave, which period expired on 4-1-1983. No extension of leave was granted to her thereafter. She was supposed to report for duties after expiry of her maternity leave. Vide letter dated 28-4-1983, she was advised to get herself examined from Dr. Harvinder Kaur. Medical examination conducted by Dr. Kaur revealed that she was suffering from acute pelvic inflammation with general debility and advised rest for three weeks.She was sanctioned leave on loss of pay from 27-4-1983 to 23-5-1983. She joined back on 24-5-1983, after being declared fit by Dr. Kaur. On 20-10-1983, she applied leave from 1-11-1983 to 6-11-1983, which was sent to Head Office and rejected by them, due to short notice. She further submitted application for extension of leave for one month from 7-11-1983 onwards. Vide letter dated 15-11-1983, she was called upon to explain as to way she should not be treated on loss of pay with effect from 1-11-1983. She was also informed that she would be proceeded against departmentally, in the event of her failing to submit her explanation for her unauthorized absence. She deliberately did not receive the letter and it was received back with the remarks 'out of station'. Again applications were submitted on 4-12-1983 and 4-1-1984 for extension of leave from 6-12-1983 to 5-1-1994 and from 6-1-1994 to 5-2-1994 respectively. Vide letter dated 7-1-1984, she was asked to report for duties immediately. Though the notice was received by her, she opted neither to report for duty nor send any reply. Thereafter, a notice was issued on 22-12-1984 calling upon her to show cause as to why one of the penalties specified under the Awards and Settlements be not imposed upon her for her prolonged absence. This notice was also received by Ms. Puri. Ultimately notices dated 2-4-1985 was sent to her advising

her to report for duties within a period of 30 days from the date of the notice, failing which she would be deemed to have voluntarily retired on expiry of the notice period. The notice was intentionally not accepted by her, resultantly it was received back undelivered. Notice dated 9-7-1985 was sent with the same directions and stipulations, as contained in notice dated 2-4-1985, which was served upon her. She did not respond to notices dated 2-4-1985 and 9-7-1985. She was treated to have voluntarily retired from bank's service.

7. Vide letter dated 29-3-1989, she requested for re-employment, which request was declined by the bank. On the strength of letter dated 21-5-1999, she was called upon by the bank to collect her terminal benefits. However, she did not turn up at all. She had voluntarily retired from service in accordance with service conditions application to her and provisions of section 25F of the Act did not come in to play.

8. The bank projects that on an earlier occasion, while working at Karol Bagh branch, she proceed on maternity leave from 5-3-1981 to 5-6-1981, sought extension from 6-6-1981 to 5-7-1991. She did not report for duty on 6-7-1981 and remained absent from 6-7-1981 to 30-9-1981. After joining duty, she again absented herself for a period of 44 days from 14-10-1981 to 26-11-1981. During the period from 2-12-1981 to 28-5-1982, she again remained absent from duty for 146 days. The bank prays that the claim put forward by Ms. Puri may be discarded and an award be passed in favour of the bank.

9. In rejonder, claimant reiterates facts pleaded by her in the claim statement.

10. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi dated 11-2-2008, the appropriate Government transferred this case to Central Government Industrial Tribunal II, New Delhi, for adjudication. Case was re-transferred to this Tribunal, vide order No. Z-22019/6/2007-IR(C-II), New Delhi dated 30-3-2011, for adjudication.

11. Ms. Kusum Puri entered the witness box to substantiate her claim. Shri S. Shreedharan, Senior Manager and Shri P.K. Ohri, Senior Manager unfolded facts on behalf of the bank. No other witness was examined by either of the parties.

12. Shri S. Sreedharan, had tendered his affidavit dated 13-7-2006 as evidence. He entered the witness box on 20-12-2006 and was cross-examined by the claimant in part. He never appeared for further cross examination. It is evident that effective opportunity was not given to the claimant to purily facts unfolded by Shri Sreedharan by an ordeal of cross examination. Under these circumstances, facts unfolded by Shri Sreedharan in his affidavit dated 13-7-2006 cannot be read against her.

13. Arguments were heard at the bar. Shri D.N. Vohra, authorised representative, advanced arguments on behalf of the claimant. Shri Umesh Pandey, authorised representative, presented facts on behalf of the bank. I have given by careful considerations to the arguments advanced at the bar and cautiously persued the records. My findings on issues involved in the controversy are as follows:

14. In her affidavit dated 9-5-2002, tendered as evidence, Smt. Kusum Puri unfolds that she was appointed as clerk by the bank vide letter dated 15-3-1977. She got married and was granted maternity leave which expired on 23-5-1983. She applied for extension of her leave, which application remained unresponded for reasons best know to the bank. She developed medical problems after delivery and was unable to attend to join her duties. She applied for leave, supported by medical certificate. She was referred by the bank to a doctor, who substantiated necessity of extension of her leave. Leaves were sanctioned in her favour from 27-4-1983 to 23-5-1983. She applied for leave from 1-11-1983 to 6-11-1983. Letter dated 15-4-1983 was not received by her. She applied for leave from 6-11-1983 to 5-1-1984 and 6-1-1984 to 5-2-1984. Letter dated 2-4-1985 was not served upon her. Bank wrote letter dated 9-7-1985, which was replied by her on 20-7-1985. She reported for duty on 10-8-1985 but was not permitted to join. She made representation dated 29-3-1989, which was replied by the bank showing their inability to consider her request favourably. During course of cross examination, she concedes that letter Ex.WW1/M8 and Ex.WW1/M11 were received by her. She projects that she joined her duties with the bank in response to letter Ex. WW1/M11. However, she feigned ignorance as to when she joined her duties.

15. Shri P.K. Ohri unfolds in his affidavit dated 11-7-2011, tendered as evidence, that the claimant was granted maternity leave for a period of three months from 5-10-1982 to 4-1-1983, vide letter dated 14-10-1982. The claimant sought extension of leave for one month, vide letter dated 12-1-1983. Since her application was not supported by any medical certificate, hence she was treated as absent from duties in an unauthorized manner. She again applied for extension of her leave vide letter dated 17-4-1983 without submitting any leave medical certificate in support of it. Bank advised her to present herself before lady doctor for her medical examination. She was examined by Dr. Harvinder Kaur. Her examination revealed that she was suffering from pelvic inflammation with general delibility. The doctor advised her rest for three weeks. Leaves from 27-4-1983 to 23-5-1983 was sanctioned to her loss of pay, since she was not having any leave to her credit. On expiry of her leave, she reported for duty on 24-5-1983.

16. Shri Ohri unfolds that she again applied for leave from 1-11-1983 to 6-11-1983, vide letter dated 20-10-1983. Her application was forwarded to Head office on 20-10-1983 itself, which was rejected due to short notice. She was communicated through telegram dated 28-10-1983 in that regard. She moved another application dated 31-10-1983 seeking extension of leave for a period of one month from 7-11-1983 onwards. Bank called upon her to submit explanation as to why her period of absence from 1-11-1983 may not be treated on loss of pay. Letter dated 15-11-1983 also mentions that it was impressed upon her that disciplinary action would be taken against her in the event of her failure to submit explanation within seven days

from the receipt of the letter. She deliberately avoided received of that letter and it was received back with postal endorsement, 'out of station'. She sought another extension of her leave from 6-12-1983 to 5-1-1984 vide her letter dated 4-12-1983. Extension of leave was again sought by her from 6-1-1984 to 5-2-1984 vide letter dated 4-1-1984. Bank called upon the claimant to report for duty and informed her that disciplinary action would be taken for her unauthorized absence. These facts were communicated to her vide letter dated 7-1-1984, which was received by her. Neither she reported for duties nor sent any reply to the notice. She continued to submit applications for extension of leave, which were either on grounds of illness of her husband or her children. Bank issued notice dated 22-12-1984 calling upon her to show cause as to why penalties specified under awards and settlements be not imposed for her continued absence. The said notice was served upon her on 7-1-1985. However, she did not report for duties.

17. Her unauthorized absence exceeded 516 days as on March 1985, details Shri Ohri. Bank issued notice dated 2-4-1985 by registered post, calling upon her to report for duties within 30 days from receipt of the notice with further advise that in the event of her failure to comply, she would be deemed to have voluntarily retired from service of the bank,on expiry of the notice period. He intentionally and deliberately avoided to receive the notice. Notice dated 9-7-1985 was again sent to her advising her that in the event of her failure to report for duty within a period of 30 days, she would be deemed to have voluntarily retired from the service of the Bank. Despite receipt of the said notice, she did not report for duties within 30 days. However, she wrote a letter dated 24-7-1985 detailing therein that she would discuss the matter on 10-8-1985. Neither she visited the bank for alleged discussion on 10-5-1985 nor did she resume her duties. She sent a letter dated 7-8-1985 expressing her inability to join her duties immediately. Since she did not report for her duties either in compliance of notice dated 2-4-1985 or notice dated 9-7-1985, she was deemed to have voluntarily retired from services of the bank. Her letter dated 7-8-1985 brings it over the record that she admits her absence from duty since 1-11-1983. During course of cross examination, he details that letter Ex. MW1/15 was written to the claimant when her application for leave was declined. He projects that the bank had not replied her letter dated 24-7-1985.

18. Out of facts unfolded by the claimant and those detailed by Shri P.K. Ohri, it came to light that the claimant proceeded on leave on 1-11-1983, after moving an application dated 20-10-1983. Her application was forwarded to Head Office, which it was rejected due to short notice. Vide telegram dated 28-10-1983, which is Ex. WW1/15, she was communicated that her application has been declined. However, she again sent an application dated 31-10-1983, which is Ex. MW1/16 seeking extension of her leave for a period of one month from 7-11-1983 onwards. Vide letter Ex. MW1/17, her explanation was called as to why her period of absence from 1-11-1983 be not treated on loss of pay. She was called upon to submit her explanation within a period of seven days from the receipt of the letter, but she deliberately avoided to receive that notice. Vide letter dated 4-12-1983, which is Ex. MW1/18, she sought extension of her leave from 6-12-1983 to 5-1-1984. Another letter dated 4-1-1984, which is Ex. MW1/19 was sent by her seeking extension of leave from 6-1-1984 to 5-2-1984. Vide letter dated 7-1-1984, which is Ex. WW1/M11, it was impressed upon her that she was absent from duties since 1-11-1983 without any sanction of leave. She was informed that she had not reported for her duties despite letter dated 15-11-1983. She was called upon to report for her duty immediately and to explain why disciplinary action should not be initiated against her. Though this notice was received by her but she opted not to respond.

19. Letter dated 22-12-1984 was sent to her, wherein it was detailed that she was absenting from her duties in an unauthorized manner from 1-11-1983 onwards. She remained absent for more than 516 days as on March 1985. Consequently, notice dated 2-4-1985,which is Ex. MW1/20 was sent to her. She was called upon to report for duties within a period of 30 days and to explain her absence. It was emphasized that her failure to report for duty within stipulated time would constrain the bank to deem that she has voluntarily retired from service. Notice dated 9-7-1985, which is Ex. MW1/21, was sent to the claimant wherein it was detailed that she was absent from duty since 1-11-1983 without prior permission or sanction of leave. She was advised to report for duty within 30 days and to submit her explanation regarding her absence, failing which the bank shall be constrained to treat her as voluntarily retired from service. In response to this letter, she wrote to the bank on 7-8-1985, vide communication proved as Ex. MW1/23, wherein she claims that she has two children aged four and two and a half years and none was there to look after them. She also projected that her husband was under treatment from Holy Family Hospital since January, 1985. In that letter, she makes reference about her absence since 1-11-1983 and claims that she was unable to join her duties. Therefore it is evident that Smt. Puri admitted, through her communication, her long absence from duties since 1-11-1983 besides service of notice dated 9-7-1985. In the letter itself, she made it clear that she was unable to join her duties in response to the notice served on her.

20. The above facts highlight that from 1-11-1983 till 10-8-1985, the claimant remained absent in an unauthorized manner and opted not to join her duties despite service of notice dated 2-4-1987 and 9-7-1985. Bipartite Settlement dated 19-10-1966 coins "gross misconducts" as well as "minor misconducts". Gross misconducts are detailed in para 19.5 of the said settlement. For the sake of convenience, those misconducts are extracted thus:

"19.5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank;

(b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interest of the bank;

(c) drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank;

(d) wilful damage or attempt to cause damage to the property of the bank or any of its customers;

(e) wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

(f) habitual doing of any act which amounts to 'minor misconduct' as defined below, 'habitual' meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions, censure or warnings have been administered or an adverse remark has been entered against him;

(g) wilful slowing down in performance of work;

(h) hambling or betting on the premises of the bank;

(i) speculation in stocks, shares, securities or any other commodity whether on his account or that of any other person;

(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

(k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

(l) abetment or instigation of any of the acts or omissions above mentioned".

21. An employee found guilty of gross misconduct may be awarded severe punishment depending upon the gravity of his act. Punishment which can be awarded to an employee for gross misconduct, detailed in para 19.6 of the said settlement, are also extracted thus:

"19.6 An employee found guilty of gross misconduct may.

(a) be dismissed without notice: or

(b) be warned or censured, or have an adverse remark entered against him; or

(c) be find; or

(d) have his increment stopped; or

(e) have his misconduct condoned or merely discharged".

22. Misconducts which do not fall within the ambit of gross misconduct are defined to mean minor misconducts. Series of misconducts, which are termed as minor misconducts are detailed as under:

"19.7 By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

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(a) absence without leave or overstaying sactioned leave without sufficient grounds;

(b) unpunctual or irregular attendance;

(c) neglect of work, negligence in performing duties;

(d) breach of any rule of business of the bank or instruction for the running of any department;

(e) committing nuisance on the premises of the bank;

(f) entering or leaveing the premises of the bank except for an entrance provided for the purpose;

(g) attempt to collect or collecting moneys within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

(h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(j) failing to show proper consideration, courtesy or attention towards officers,customers or other employees of the bank, unseemly or unsatisfactory behaviour while on duty;

(k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;

(l) incurring debts to an extent considered by the management as excessive".

23. For minor misconducts, punishments which can be awarded to an employee are detailed in para 19.8 of the settlement, which are also detailed herein under:

"19.8 An employee found guilty of minor misconduct may:

(a) be warned or censured; or

(b) have an adverse remark entered against him; or

(c) have his increments stopped for a period not longer than six months".

24. Whether act/misconduct of the claimant amounts to minor misconduct, when she overstayed sactioned leave for a long period? Admittedly, such an act has been projected as minor misconduct under Clause 19.7 of the settlement, referred above. On the other hand settlement dated 14-4-1989 (commonly known as V Bipartife settlement) projects that when an employee absents himself from work for a period of 90 or more consecutive days,without submitting any application for leave or for its extension or without any leave to his credit or beyond

period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken up employment in India or when the bank is reasonably satisfied that he has no intention to join duties, bank may at any time thereafter give notice calling upon him to report for duty within 30 days of the notice and on his failure to report for duty, the employee would be deemed to have voluntarily retired from bank's services on expiry of the said notice. For the sake of convenience, provisions of V Bipartite settlement are extracted thus:

"XVII Voluntary Cessation of Employment by the Employees.

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following :

(a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for it extension or without any leave to his credit or beyond the period of leave sactioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the managementis reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of expiry of the aforsaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(b) Where an employee goes abroad and absents himself for a period of 150 or more consecutive days without submitting any application for leave or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence,where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment".

25. Thus, it is evident that overstayal of sanctioned leave can be treated as minor misconduct as well as when an employee fails to report for duty within a period of 30 days after service of notice in that regard, it may be treated as voluntary abandonment of service. Therefore, question would be as to under what circumstances overstayal of sanctioned leave would be considered as minor misconduct and when it would be considered as voluntary abandonment of services? Such proposition was raised before the Apex Court in Jeevan Lal [1961 (2) FLR 537] wherein the Court was called upon to construe as to what continuous absence in the context of gratuity scheme would mean. It was ruled therein that if an employee continues to be absent from duty without obtaining leave and in an unauthorized manner for such a long period of time, then inference may reasonable be drawn from such long absence that by his absence he is absenting from service and long unauthorized absence may ultimately be held to cause break in continuity of service. It was also observed therein that it was always to be question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity in service for the requisite period or not. The case where long unauthorized absence gives rise to an inference that such service is intended to be abandoned by the employee is of course different.

26. In Shahoodul Haq (AIR 1974 SC 1986) the Apex Court laid down law to the same effect. It would be expedient to reproduce the observations made by the Apex Court, which are detaled as under :

> "The undenied and undeniable fact that the appellant had actually abandoned his post or duty for an exceedingly long period, without sufficient grounds for his absence, is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against

him. It would only prolong his agony. On the view we have adopted on the facts of this case it is not necessary to consider the further question whether any notice for termination of services was necessary or duly given on the assumption that he was not punished. We do not think that there is any question involved in this case which could justify an interference by us."

27. In Venkatiah [1963 (7) FLR 343], the Apex Court was dealing with the same proposition. Observations made therein are relevant for consideration, which are reproduced thus:

"It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and form other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf".

28. In Syndicate Bank [2000(85) FLR 807] and Manzur Ali Khan [2001 (91) FLR 28], sharing the same view it was announced that if a person absents himself beyond the prescribed period for such leave of any kind can be granted, he should be treated to have resigned and ceased to be in service. It was concluded therein that in such cases, there was no need to hold an enquiry or to give any notice as it would amount to useless formalities.

29. In the light of the above proposition of law, it would be expedient to know what the words 'abandon' and 'abandonment' mean? Ordinarily, the word 'abandon' does not mean 'merely leave' but 'leaving completely and finally. Word "abandonment" would indicate that it has a connotation of finality, which would mean relinquishment or extinguishment of a light, giving up of something absolutely, giving up with an intent of never claiming a right or interest, to renounce or forsake utterly. In order to constitute on "abandonment" there must be a total or complete giving up of duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform duties pertaining to an office must be with an actual or imputed intention on the part of the officer to abandon and relinquish the office.

30. Abandonment is a voluntary positive Act. A man must expressly say that he gives up his right. If the remains quiet, in cannot be said that he is forsaking his title to properly or his interest therein. An office is abandoned by ceasing to perform its duties. A temporary absence is not, ordinarily sufficient to constitute an abandoment of an office. A more absence of a workman from duty can not be treated as an abandonment of service. Abandonment or relinquishment of service is always a question of intention and normally, such an intention cannot be attributed to an employee without adequate evidence is that behalf. However, the "intention" may be inferred from the acts and conduct of the party. The question as to whether the job, in fact has been abandonment or not is a question of fact which is to be determined in the light of the surrounding circumstances of each case.

31. With above legal prelude in mind, now facts of the present controversy would be addressed to in order to ascertain whether overstayal of sanctioned leave on the part of Smt. Puri was minor misconduct or her intention to abandon services emerges out. As projected above, Smt. Puri remained on maternity leaves upto 4-1-1983. She was supposed to join her duties on 5-1-1983. She opted not to join her duties. Instead she sent an application, which was not supported by medical certificate, seeking extension of leave on medical grounds for one month. She joined back on 24-5-1993. She again submitted leave application from 1-11-1983 to 6-11-1983, which was rejected by Head Office, due to short notice. Fact unfolded by Shri Ohri projects that telegram dated 28-10-1983 was sent to her in that regard. However, instead of joining back, she again opted to send another application for extension of her leave for a month, from 7-11-1983. Bank wrote various letters detailing that she was absenting from her duties since 1-11-1983. Vide notices dated 2-4-1985 and 9-7-1985 she was advised to report for her duty within 30 days of receipt of the notice, failing which she would be deemed to have voluntarily retired from bank's service. In response to notice dated 9-7-1985 she informed the bank that she was unable to join duties. She wrote to the bank on 7-8-1985, proved as Ex.MW1/23, wherein she claims that she has two children aged four and two and a half years and none was there to look after them. She also projected that her husband was under treatment from Holy Family Hospital since January 1985. In that letter, she makes reference about her absence since 1-11-1983 and claims that she was unable to join her duties.

32. On 2-4-1985, bank wrote to her that she was absent unauthorizedly, which position was highly irregular and in contravention of rules governing her service. She was called upon to report for duties within 30 days of receipt of the notice, failing which she would be deemed to have voluntarily retired from service. Service of this notice was avoided by her. Finally, notice dated 9-7-1985 was sent to lady wherein bank observed that she was continuing to be absent from duty, which position was highly irregular and in contravention of rules governing her service. She was advised to report for duties within 30 days of receipt of the notice, failing which she would be deemed to have voluntarily retired from service, on expiry of the notice period. This communication reached her hands, but she failed to respond to it.

33. From above facts, it is apparent that the claimant regularly proceeded on leave without obtaining sanction. Thereafter, she maintained an eerie silence. What were the reasons for such a behaviour? Her deposition spell out those reasons also. As detailed by her, she joined service of the bank on 15-3-1977. She proceeded on maternity leave, which expired on 4-1-1983. She sought extension of her maternity leave vide letter dated 12-1-1983, which

request was not granted since her application was not supported by medical certificate. On 17-4-1983, she again applied for extension of leave. The bank advised her to appear before Dr. Harvinder Kaur for her medical check up. Her medical examination revealed that she was suffering from acute pelvic inflammation with general debility. Doctor advised her rest for three weeks and as such, leave from 27-4-1983 to 23-5-1983 was sanctioned on loss of pay, since there was no leave to her credit.On expiry of leave, she reported for duty on 24-5-1983. She again applied for leave on 20-10-1983 with effect from 1-11-1983 to 6-11-1983. Her application was forwarded to Head Office, which was rejected due to short notice. She was communicated in that regard vide telegram dated 28-10-1983. She gave another application dated 31-10-1983 for extension of her leave for a period of one month with effect from 7-11-1983. Bank upon her to submit her explanation for her unauthorized absence with effect from 1-11-1983. It was impressed upon her that disciplinary action would be initiated in the event of her failure to submit explanation within seven days. She deliberately avoided to receive the letter sent by post. She again applied for extension of her leave from 6-12-1983 to 5-1-1984 vide letter dated 4-12-1983. It was followed by another letter dated 4-1-1984, where she sought extension of leave from 6-1-1984 to 5-2-1984. On 7-8-1985, she wrote a letter expressing her inability to join duties immediately. Since she did not join her duties in compliance of notices dated 2-4-1985 and 9-7-1985. Subsequently she requested for settlement of her duties. Therefore these facts highlight that after her marriage, Smt. Puri was much concered above her children. She thought it expedient to rear her children, instead of serving the bank. All these circumstances make it apparent that a decision was taken by the lady to stay with her husband and to bid farewell to the job. Thus it is evident that Smt. Puri made her intention to abandon her job well known to the authorities by her acts and conduct. Smt. Puri never harboured such feelings that she would for her duties with the bank. The moment she took a decision to abandon her job, shackles of service were done away.

34. Law permits her to terminate relationship of employer and employee by voluntarily submitting her resignation or automatically by not joining duty and remaining absent for a long period. Absence from duty in beginning may be termed as misconduct but when absence is for a very long period, it would amount to voluntary abandonment of service and in that eventuality, bonds of service come to an end automatically. Misconduct can be committed by an employee and not by an ex-employee, who had voluntarily abandoned his service. Therefore, by her unauthorized absence for more than 648 days, Smt. Puri abandoned her service and became immune from applicability of clause 19.7 of the settlement dated 19-10-66. Under these circumstances it is concluded that the contention advanced by Shri Vohra, to the effect that her act was minor misconduct, punishable with stoppage of increment for not more than six months, is untenable.

35. Whether bank had followed requisite procedure provided by Clause XVII of the V Bipartite Settlement? At the cost of repetition, it is said that when an employee absents himself from work for a period of 90 days or more consecutive days: (i) without submitting any application for leave; or (ii) application for extension of leave; or (iii) without any to his credit; or (iv) beyond period of leave sanctioned originally/subsequently; or (v) when there is satisfactor evidence that he has taken up employment in India; or (vi) when the bank is reasonable satisfied that he has no intention of joining duties, the management may at any time thereafter give notice to him at his last knwon address calling upon him to report for duty within 30 days for the notice stating the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. It is evident that the employer shall serve a notice on the employee calling upon him to join his duties within 30 days of the notice. The employer is obliged to state the grounds for coming to the conclusion that the employee has no intention of joining duties. It is also to be detailed in the notice that in case of his failure to report for duty within 30 days of the notice or offer on explanation for his absence, and expression of intention of joining duties, he shall be deemed to have voluntarily retired from bank's service on expiry of the said notice. When contents of notice dated 9-7-1985 are perused is clear that the bank detailed that the claimant had absented herself from duty since 1-11-1983 unauthorisedly, which position was contravention of service rules applicable to her. Spell of her long unauthorized absence, that too without any reasonable explanation from her side made her intention of not joining her duties apparent and well known. Neither she joined her duties nor offered a reasonable explanation for her absence nor made her intention known to the effect that she intended to join her duties. These facts bring it to light that the claimant absented herself from reporting for her duties for a period of 90 or more consecutive days without any sanction of leave. Time and again, bank wrote to her calling her to report for duties, but to no avail. In letter dated 9-7-1985, it was emphasized by the bank that her absence was highly irregular and in contravention of the service rules. Therefore, it is evident that in the notice sent to the claimant, bank detailed grounds for coming to conclusion that she had no intention of joining her duties. 30 days' time was given to the lady to report for her duty, but she had not availed that opportunity. Though she wrote to the bank but never made her intention known to join her duties. Consequently, it is evident that all requirements detailed in Clause XVII of the V Bipartite settlement stood satisfied. The claimant voluntarily abandoned her services.

36. There are circumstances which give reaffirmation to these facts. The bank vide letter dated 9-7-1985, called upon the claimant to report for duties within 30 days of receipt of notice, failing which she would deemed to have voluntarily retired on expiry of the notice period. Though the notice was received by her, she preferred to refrain from joining duties. Instead, she wrote a letter dated

24-7-1985 detailing therein that she would discuss the matter on 10-8-1985. Neither she visited the bank for alleged discussion on 10-8-1985 nor did she resume her duties. That fact bring her intention to abandon her services over the record. Thus her claim in that regard is found to be worthless. These circumstances make it evident that she had no intention to join and abandoned her job voluntarily.

37. Whether the bank was enjoined with a duty to initiate enquiry against Smt. Puri for her unauthorized absence, before invoking provisions of clause 17 of 5th Bipartite Settlement? In Suresh Chand (2007 LLR 344) contention of the workman that no domestic enquiry was conducted and termination of his services was illegal, was brushed aside and it was rules that when a workman absents from duty without any intimation or prior permission, termination of his services without holding an enquiry will be justfied. In Vijay Pal (2007 L.L.R. 7) and G.T. Lad (1979 Lab I.C. 2910) same proposition of law were laid. In Syndicate Bank (AIR 2000 S.C.2198) the Apex Court was confronted with such a proposition, as exists in the present controversy. Workman was absent from his work place for a period of 90 days or more consecutive days. A notice was served upon him to report for duty within 30 days of notice alongwith the grounds on which bank came to the conclusion that the workman had no intention to join his duties. The workman did not respond to that notice at all Bank passed orders to the effect that the workman had voluntarily retired from the service of the bank. Apex Court laid that as far as principles of natural justice are concerned the court was to consider: (1) whether show cause note detailing the note of the complaint or accusation was served, (2) whether an opportunity was there for the workman to state his case, and (3) whether the management acted in good faith and has been fair, reasonable and just. It was rules therein that on the facts and circumstances of the case the principles of natural justice were inbuilt in the clause relating to voluntary cessation of employment and when workman had not opted to join his duties on service of notice, principles of natural justice were complied with. The law laid by the Apex Court in the precedent referred above is applicable to the case of Smt. Puri.

38. There is other facet of the coin. The bank agitates that the claim presented by Smt. Puri is stale. Shri Pandey wants this Tribunal to discard her claim. For an answer, provisions of the Act are to be looked into. Section 10(1)of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of Section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ. 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, event so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2)LLJ 326]. In Guramil Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting and relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. Relying decision of the Apex Court High Court of Delhi ruled in Sher Singh [2008 (1) LLJ 161] that delay in seeking remedy in law ousts the petitioner. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehenced by the litigants.

39. As projected by the claimant in her affidavit Ex. WW-1/A she joined service of the bank on 12-1-1977. In letter dated 7-8-1985, she made an admission to the effect that she was absent from her duties since 1-11-1983. She attempts to explain her reasons for absence, without making it clear that she had an intention to join her duties. She was deemed to have voluntarily retired from service of the bank with effect from 10-8-1985. She approached the Conciliation Officer in the year 2000. Closure report was sent by the Cociliation Officer to the appropriate Government on 12-10-2000. Consequently, it is emerging over the record that for more than fifteen years the claimant was sleeping and suddenly she came out of slumbers and raised an industrial dispute. As pointed above law on stale claim is conflicting. However, long absence of the claimant make it clear that she had to intention to join her duties. In these circumstances spell of fifteen years without any action on the part of the claimant makes her claim stale.I find that the claimant is not justified to agitate her dispute after such a long spell to time. Delay in raising the dispute certainly creates hindrance against the claimant.

40. In view of reasons detailed above, I filed action of the bank treating Smt. Puri deemed to have voluntarily abandoned her service as just, fair and legal. Her claim is also liable to be discarded being stale one. She is not entitled to any relief. Her claim is brushed aside. An award is, accordingly, passed in favour of the bank and against the claimant. It be sent to appropriate Government for publication.

Dated : 19-11-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 13.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 663/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/118/98-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S. O. 13.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 663/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/118/98-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT : Sri A. K. RASTOGI, Presiding Officer,

Case No. I.D. 663/2005

Registered on 25-8-2005

Shri Sadhu Singh, C/o Ravi Wadhawan, INTUC Labour Council, 265, Adarsh Nagar Market, Jalandhar.

Petitioner

Versus

The Zonal Manager, Punjab and Sind Bank, Zonal Office, Jalandhar.

Respondent

Appearances

For the claimant Sh. R. K. Singh Parmar AR.

For the Management Sh. J.S. Sathi Advocate

AWARD

Passed on October, 31, 2012

On reconsideration of the matter in the light of the direction given by the Hon'ble Punjab and Haryana High Court in its judgement dated 5-12-2000 in writ petition No. 13922/1999 filed by the claimant Sadhu Singh, the Central Government vide order No. L-12012/118/98-IR (B-II) dated 27th March, 2001 in exercise of its power under Section 10, sub-section 1, Clause (d) has referred the following industrial dispute for adjudication to this Tribunal.

> "Whether the action of the management of Punjab and Sind Bank, Zonal Office, Jalandhar in terminating the services of Sh. Sadhu Singh, Ex-security Guard w.e.f. 18-1-1998 is legal and justified? If not, to what relief the concerned workman is entitled and from what date?"

As per claim statement the claimant remained in the service of the respondent-Bank from 20.9.1993 to 16.1.1998 as Security Guard and he rendered more than 240 days of continuous service in all the years preceding the date of his termination. His services were terminated on 18.1.1998 without any inquiry and in violation of Section 25-F of the Act. Seniority list was not maintained as per Rule 77 and juniors were retained while terminating his services. It has been also pleaded that his attendance was being marked in the register of the bank, he was paid wages by the Bank and he worked under the supervision and control of the Bank. He has claimed his reinstatement with full back wages.

The claim was contested by the management. It was denied that the claimant was the employee of the bank. According to the bank the claimant is not a workman and he can't claim any relief against the bank. He had been deputed by the District Sainik Welfare, Jalandhar and had been engaged as an ad hoc arrangement purely on temporary basis. His wages were to be given by District Sainik Welfare Officer as per the arrangement. The bank has disputed the service period alleged by the workman and also the fact that he worked continuously for 240 days. According to the bank the claimant was neither employed nor terminated by the bank. Section 25-F of the Act and Rule 77 of Industrial Disputes (Central Rules) are not applicable in the case and the case of the claimant deserves to be dismissed.

In support of its case claimant examined himself while on behalf of bank-respondent Harcharan Singh, Manager, Industrial Relations Department of the Zonal Office, Jalandhar of the bank was examined. Parties relied on certain papers also which will be referred at proper place.

I have heard the AR of the claimant and perused the written arguments submitted by the management counsel. I have also gone through the evidence on record. The claimant claims to be a workman and an employee of the respondent-Bank. He has filed Employee Registration

Card, copies of register of employee, passbooks and challans as the proof of his being an employee of the bank. He however has admitted in his cross-examination to have applied for the post in the bank through Sainik Board and that he was working as daily wager. On the other hand management witness Harcharan Singh stated in his cross-examination that the claimant served the management as a SPO who had been deputed by the Sainik Board, he was being paid by pay orders and he used to deposit pay order in his account. The witness however admitted that the claimant recorded his attendance in the bank register. In support of his statement the witness has relied on certain documents Annexure RI to R5 of his affidavit.

From the pleadings and the evidence of the parties it is clear that the core issue involved in the matter is the relationship of employer and employee between the bank and claimant. In Section 2(s) of the Act the term 'workman' has been defined in the first place, by reference to a person (including an apprentice) employed in an 'industry' to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It brings in the concept of contract of employment between the employer of an industrial establishment and the employee. Unless there is a contract of employment between the two or there is a relationship of employer and employee between them the definition of workman will not come into play.

The AR of the claimant argued that the employee registration card and other papers filed by the claimant goes to show that the claimant was an employee of the bank. The management on the other hand has argued that none of the papers filed by the claimant shows the relationship of employer and employee between the bank and the claimant. Employee registration card is not from the bank but from the Sainik Welfare Board and on the basis of other papers also the relationship of employer and employee between the management and the claimant cannot be inferred.

I need not to say that the burden of proving the relationship of employer and employee lies on the party who asserts it. Here in this case the claimant has asserted the said relationship hence, it was for him to prove it. He has to stand on his own legs. As. was observed by the Apex Court in Workmen of Nilgiri Co-operative Marketing Society Limited Vs. State of Tamil Nadu 2004-II-LLIJ 253 "No single test - be control test, organization test or any other test was determinative test for determining the jural relationship of employer and employee." The Hon'ble Court held that the Court is required to consider several factors which would have a bearing on the result; (a) Who is the appointing authority? (b) Who is pay master? (c) Who can dismiss? (d) How long alternative service lasts? (e) The extent of control and supervision. (f) The nature of job for example whether it is professional or skilled work? (g) Nature of establishment. (h) The right to reject.

Here in the case there is no appointment letter or termination order to show that the bank had the right to appoint or terminate the claimant or the wages were paid by the bank directly to the claimant. There is no evidence to show that the claimant was under the administrative control of the bank. Simply on the basis of the Attendance Register the relationship of employer and employee cannot be inferred. It is important to note that the bank does not deny the working of the claimant with it. As the management-witness has stated the claimant was being paid through pay orders. The attendance of the claimant appears to have been recorded in order to calculate the wages payable to him. In no way it can be accepted as proof of relationship of employer and employee.

From the above going discussion it is clear that the claimant has failed to prove the relationship of employer and employee between the respondent-bank and himself and that he had been appointed and terminated by the bank. There is therefore no occasion to adjudicate the legality or otherwise the termination of the claimant by the management. The reference is therefore decided against the claimant. Let two copies of the award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 14.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1341/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/76/2007-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S. O. 14.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 1341/2007) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/76/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. RASTOGI, Presiding Officer.

Case No. I.D. 1341/2007

Registered on 13/11/2007

Shri Pawan Kumar Singhal, House No. 219, Sector 14, Karnal.

Petitioner.

Versus

The Branch Manager, Punjab National Bank, Branch Office, Bank Road, Jind.

Respondent

APPEARANCES

For the workman : Sh. Manoj Kumar Sood.

For the Management : Sh. N.K. Zakhmi Advocate

AWARD

Passed on November 5, 2012

Central Government vide Notification No. L-12012/76/2007 (IR(B-II)) Dated 8.10.2007, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, .1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :-

> "Whether the action of the management in putting the workman under suspension for a long period from 20-11-1990 to till date is just, fair and legal ? If not, to what relief the workman is entitled to and from which date?"

The case of the workmaan is that he was serving in the erstwhile New Bank of India as Teller at the relevant time. On 20-11-1990 he was put under suspension on the charge of withdrawing the amount from different saving accounts and misappropriating the same. An FIR was lodged on 22.11.1990 and on 10.4.1992 he was charge-sheeted. In the year 1993 New Bank of India merged with Punjab National Bank and after amalgamation the service conditions of the employees of Punjab National Bank are governed by Bipartite Settlement and Awards. After amalgamation the workman was informed by PNB that he would continue to remain under suspension until the completion of departmental proceedings which would be conducted in accordance with Rules and practice as applicable to employees of Punjab National Bank; but till date no charge-sheet was issued to him. It has been stated in the claimant statement that the workman has been receiving the subsistence allowance from the date of suspension but since the trial is at the prosecution evidence stage and is not likely to be concluded soon, the workman being under suspension since 1990, has been suffering. He is entitled to full pay and allowances from the date of suspension as per Bipartite Settlement. He has prayed accordingly for full pay and allowances.

The claim was contested by the management. It was stated that though the Bank was almost inclined to proceed departmentally against the workman but it could not do so in view of the provisions contained in the Bipartite Settlement which clearly provide that in case an employee is put on trial, the departmental inquiry is to be kept in abeyance till finalization of such criminal trial. The subsistence allowance to workman is being paid in terms and provisions of Bipartite Settlement. .The delay if any in the trial is on account of the act and conduct of the workman and on account of the provisions of the Bipartite Settlement and the Bank cannot be blamed for delay in finalization of the case. It was also pleaded that the appropriate Government has referred the matter to the Tribunal for the decision of the legality or otherwise only of the suspension whereas the workman has prayed for full pay and allowance, hence, the payer is misplaced and deserves to be rejected. The suspension of the workman is just and legal.

Affidavits were filed on behalf of the parties. As a pure legal question was involved in the case, hence, no further evidence was required and the parties did not produce any other evidence accordingly.

Written arguments were filed on behalf of workman. I have heard the learned counsel for the parties and also perused the written arguments of the workman. I also went through the evidence on record. I agree with the learned counsel for the management that the claim of the workman regarding full pay and allowances is misplaced. The dispute in the reference is of the legality and justification of the suspension order. It is clear from the pleadings of the parties and from the order of reference that at the time of the reference of the dispute the workman was under suspension and the trial was pending against him on a criminal charge but from the papers filed in the case during the proceedings it appears that much water has flown down the Sutlej since then. The trial in the Criminal Court has concluded resulting in the acquittal of the workman, the appeal filed against the judgment of the trial Court were dismissed by the Sessions Court and the Bank has commenced the departmental proceedings against the workman after his acquittal in the criminal case. The workman was issued, charge-sheet by the Department which was challenged by him before the Hon'ble High Court and the Hon'ble High Court vide order dated 8-9-2011 (paper No.28) in Civil Writ Petition No.16828/2011

has stayed further proceedings in pursuance to the charge-sheet dated 27-8-2011. The papers in this regard were filed by the workman behind the back of the management after the conclusion of the arguments but, the factual position appearing from the papers cannot be overlooked.

The learned counsel for the workman however failed to show that the suspension of the workman is in violation of any statutory provision. As per agreement even if the workman had been acquitted department proceedings can be initiated. There is nothing to show that the workman was ordered to remain under suspension against the Service Rules. The learned counsel for the workman has relied on the judgment of the Punjab and Haryana High Court, in Jaspal Singh Kohli Vs. Punjab National Bank and others 1996 ISJ (Banking) 558. Para 10 of the judgment is relevant here. The Hon'ble Court said :

"It has already been noted above that petitioner was suspended because of the investigation in the criminal case. Once the petitioner has been acquitted in those cases,there is no ground to maintain the suspension merely because the respondents feel that they can initiate departmental action."

The Hon'ble Court applying the ratio of the decision of the Hon'ble Rajasthan High Court in the case of Sunder Lal Vs. State of Rajasthan 1980(3) SLR said that the agency of the suspension in the peculiar facts in any case cannot be allowed to be perpetuated in this manner.

In Sunder Lal case the Hon'ble Rajasthan High Court had concluded that if disciplinary authority wanted to initiate departmental inquiry after acquittal of the petitioner it is necessary to pass a fresh suspension order.

As stated above, here in the case the matter is already pending before the Hon'ble High Court in Civil Writ Petition No. 16828/2011. Hence under the circumstances this Tribunal is no more competent to go into the validity of the suspension of the workman. The reference is answered accordingly. Let two copies of the award be sent to the Central Government for further necessary. action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 15.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियेन्टल बैंक ऑफ कॉमर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 85/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/67/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

4760 GI/12-6

New Delhi, the 7th December, 2012

S.O. 15.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 85/2012) of the Central Government Industrial Tribunal/Labour Court-I, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Oriental Bank of Commerce and their workman, which was received by the Central Government on 07-12-2012.

[No. L-12012/67/2011-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 85/2012

Shri Rajesh Kumar,
R/o F-454, Village Gitorni,
New Delhi.

...Workman

Versus

The Manager,
Oriental Bank of Commerce,
59–63-B, Sarvpriya Vihar Branch,
New Delhi-110016.

...Management

AWARD

A claim was made by Shri Rajesh Kumar to the effect that he served Sarvapriya Vihar branch of Oriental Bank of Commerce (in short the bank) as safai Karamchari. It was projected that his services were dispensed with by the bank on 25-06-2008 in an illegal manner. His claim was resisted by the bank. Consequently, he raised an industrial dispute before the Conciliation Officer. Contest to his claim was given by the bank before that forum also. Resultantly, conciliation proceedings ended into a failure. On consideration of the failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/67/2011-IR (B-II), New Delhi dated 23-05-2012 with following terms :

"Whether the action of the management of Oriental Bank of Commerce, Survapriya Vihar branch, New Delhi in terminating the services of Shri Rajesh Kumar, S/o Shri Ramesh Kumar, ex-safai Karamchari

with effect from 24-06-2008 is legal and justified? What relief the concerned workman is entitled to?

2. the appropriate Government commanded Shri Rajesh Kumar in the reference order itself to file his claim statement with complete relevant documents, list of reliance and witnesses with this Tribunal within 15 days from the receipt of the order. Despite the command so given, claimant opted not to file his claim statement.

3. Notice of claim statement was sent to Shri Rajesh Kumar on 31-07-2012 by registered post, calling upon him to file his claim statement before this Tribunal on 17-08-2012. Notice was sent to him at premises No. F. 454, Village Ghitorni, New Delhi, the address mentioned by the appropriate Government in the reference order. Neither postal article was received back nor postal services remained disturbed during August, 2012. Therefore, every presumption lies in favour of the fact that the notice was served upon Shri Rajesh Kumar. Defence service, no claim statement was filed by the claimant.

4. Another notice was sent by registered post on 24-08-2012 calling upon Shri Rajesh Kumar to file his claim statement on 17-09-2012. Next notice was sent by registered post on 11-09-2012 calling upon the claimant to file his claim statement on 01-10-2012. Last notice was sent to him by registered post on 19-10-2012 calling upon him to file his claim statement on 19-11-2012. All these notices were sent at the address referred above by registered post. None appeared on behalf of the claimant nor postal services remained disturbed during the period, referred above. Therefore, every presumption lies in favour of the fact postal authorities discharged their duties in a regular manner and served notices on the claimant. Despite service of the notices, so sent, claimant opted not to file his claim statement.

5. Considering the fact that the question referred for adjudication casts an onus on the bank, the bank was called upon to file its response to the reference order. Response was filed by the bank on 18-10-2012 wherein it was pleaded that relationship of employer and employee never existed between the bank and the claimant. It was further detailed therein that in the absence of any supervision and control over the claimant by the bank, reference is liable to be answered in favour of the bank.

6. Since bank raised an issue of absence of supervision and control over the claimant, it was opined that certain facts are concealed by the bank. Therefore, bank was again called upon to detail full facts before the Tribunal. Supplementary response was filed by the bank wherein it has been claimed that Shri Rajesh Kumar was never employed in any capacity by the bank. It has been also been claimed that Shri Rajesh Kumar was never employed even on contract basis. Thus, it is emerging over the record that there existed no relationship of employer and employee between Shri Rajesh Kumar and the bank.

7. When no relationship of employer and employee ever existed between Shri Rajesh Kumar, S/o Shri Ramesh Kumar, and the bank, there was no occasion for the bank to terminate his services. In view of above facts, legality and justifiability of action of termination of services of Shri Rajesh Kumar cannot be gone into, for the purpose of adjudication. Consequently, it is evident that Shri Rajesh Kumar is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 30-11-2012

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 16.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियेन्टल बैंक ऑफ कॉमर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 104/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/364/97-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S. O. 16.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 104/2011) of the Central Government Industrial Tribunal/Labour Court-I, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Oriental Bank of Commerce and their workman, which was received by the Central Government on 05-12-2012.

[No. L-12012/364/97-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS OMPLEX, DELHI

I.D. No. 104/2011

Shri Chander Kumar Kohli
R/o BG-6/153-A,
Paschim Vihar,
New Delhi-110063. ...Workman

Versus

The General Manager,
Oriental Bank of Commerce,
E Block, Harsha Bhawan,
Con. Place,
New Delhi-110001 ...Management

AWARD

Punjab Co-operative Bank Ltd. (in short the Co-operative Bank) amalgamated with Oriental Bank of Commerce (in short the Bank) with effect from 08-04-1997. Prior to its amalgamation, the Co-operative Bank awarded audit job of its accounts to M/s. Kohli & Associates, Accounts Consultants. Shri Chandra Kumar Kohli, partner in M/s. Kohli & Associates performed audit job for the Co-operative Bank. On 06-11-1996, he moved an application for his appointment as an Officer in the Co-operative Bank, which application was kept under consideration. On 14-11-1996, Chairman of the Co-operative Bank informed him that he cannot be recruited as an Officer since the Co-operative Bank was placed under moratorium. After amalgamation of the Co-operative Bank with the Bank, Shri Kohli raised a demand for his reinstatement in the services of the Bank claiming himself to be an employee of the Co-operative Bank. His demand was not conceded to. He raised an industrial dispute before the Consiliation Officer. His claim was contested by the Bank and as such conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/364/97/IR-(B-II), New Delhi dated 27-07-1998, with following terms :

> "Whether the contention of Shri Chander Kumar Kohli that he was a workman of the management of erstwhile Punjab Co-operative Bank Ltd. (now amalgamated with Oriental Bank of Commerce) is correct and justified? If so, whether the action of the management in terminating his services with effect from 30-11-1996 is legal and justified ? If not, to what relief the said workman is entitled?"

2. Claim statement was filed by Shri Chander Kumar Kohli pleading therein that he was engaged by the Co-operative Bank on 01-7-1984. Since then, he was working as a clerk. He was having a clean record of service. There was no complaint against him. He used to write ledgers, reconcile inter-bank entries, handle security documents and reconcile work relating to Reserve Bank of India dealings with the Bank. As and when required, Bank used to depute him to work on counters. He was being paid his wages on vouchers. For releasing his payments, the Bank used name of M/s. Kohli & Associates. He was shown as proprietor of M/s. Kohli & Associates, while in fact no such firm ever existed. No agreement was ever entered into between the Co-operative Bank and M/s. Kohli & Associates. Such an arrangement was made only with a view to evade liability to regularize services of the claimant. From February 1995, his wages were paid through cheques, which he used to deposit in account No. 1959 being maintained with the Co-operative Bank. On 06-11-1996, he wrote a letter to the Chairman of the Co-operative Bank, asking him to regularize his services, which letter was responded by the Chairman on 14-11-1996. Hi services were dispensed with by the Co-operative Bank on 30-11-1996 without giving any notice or pay in lieu thereof and retrenchment compensation. Termination of his services by the Co-operative Bank amounts to retrenchment. His retrenchment is violative of the provisions of Section 25F of the Industrial Disputes Act, 1947 (in short the Act). He raised a demand for reinstatement in service. Ultimately, he was forced to raise a dispute before the Conciliation Officer. The Co-operative Bank was amalgamated with the Bank. Bank had not shown any interest in settlement of his claim and as such conciliation proceedings failed. He claims reinstatement in service with continuity and full back wages.

3. Demurral was made by the Bank pleading that the claimant was not an employee of the Co-operative Bank or the Bank and as such no relationship of employer and employee existed between the parties. Claimant was proprietor of M/s. Kohli & Associates (Accounts Consultants) and as such rendering various acconting job to the Co-operative Bank. Remuneration was received by M/s. Kohli & Associates through various bills from time to time. Claimant never acquired status of an employee. He was not a workman within the meaning of Section 2(s) of the Act and as such no industrial dispute ever existed. M/s. Kohli & Associates was paid by the Co-operative Bank on contractual basis. Claimant wrote to the Chairman of the Co-operative Bank for his recruitment as an Officer vide letter dated 06-11-1996. It was replied by the Chairman vide letter dated 14-11-1996 informing him that Co-opeative Bank was not recruiting any Officer since it was placed under moratorium. It has been disputed that services of the claimant were terminated by the Co-operative Bank on 30-11-1996. No obligation exists on the Bank to accept the claim put forward by the claimant. His claim does not lie, being devoid of merits, pleads the Bank.

4. Case was transferred for adjudication to Central Government Industrial Tribunal No. 2, New Delhi, by the appropriate Government, vide order No. Z-22019/6/2007-IR (C-II), New Delhi dated 11-02-2008. It was retransferred to this Tribunal vide order No. Z-22019/6/2007/IR (C-II), New Delhi dated 30-03-2011, for adjudication.

5. Claimant examined himself (WW1), Shri Ishwar Singh (WW2) and Shri Arun Kumar Kurich (WW3) in support of his claim. Shri R.C. Sharma unfolded facts on

behalf of the Bank. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Harish Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorized representative, presented facts on behalf of the Bank. I have given my careful considerations to arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

7. In his affidavit, Ex. WW1/A, tendered as evidence, claimant unfolds that he was working as clerk with the Co-operative Bank since 11-07-1994. His salary was Rs. 4400.00 per month. He used to write ledgers and reconcile inter bank entries and reconcile ledgers relating to transactions with Reserve Bank of India. Records of the Co-operative Bank would reaffirm the aforesaid facts, since he dealt with various reigsters maintained by Co-operative Bank. He used to work for eight hours a day. His salary was paid on vouchers with a view to deprive him of certain facilities. Those vouchers were issued in the name of M/s. Kohli & Associates, of which firm he was shown as proprietor. However, no such firm ever existed. There was no contract between M/s. Kohli & Associates and the Co-operative Bank. Payment vouchers were credited to his saving bank account No. 1949, maintained at Chandni Chowk branch of Co-operative Bank. The said account was an individual account. On 06-11-1991, he wrote a letter to the Chairman requesting him to make him permanent employee, which letter was replied on 14-11-1996. Thereafter he was dismissed on 30-11-1996. His salary for the months of September, October and November 1996 was not paid. His dismissal amounts to retrenchment within the meaning of Section 2(oo) of the Act. Legal obligations as enacted by provisions of Section 25F of the Act, were not fulfilled, hence act of the Co-operative Bank is illegal and unjustified. During the course of his cross-examination, he projects that no appointment letter was given to him despite requests in that regard. He concedes that his signatures appear on Ex. WW1/MB, which was tendered by him to the Bank.

8. Shri Ishwar Singh unfolds that records from August 1994 to December 1994 are available with the Bank, since it were received from the Co-operative Bank. As per those records, Shri Chander Kumar Kohli was not working with the Co-opertive Bank from August 1994 to December 1994. He performed audit job for the Co-operative Bank during the period referred above. Vouchers Ex. WW2/1 and Ex. WW2/2 project that payment was made to Shri Kohli for doing audit work.

9. Shri Arun Kumar Kurich presents that records for the period January 1995 to August 1996 pertaining to the Co-operative Bank, are not available. Claimant was not having any account in Chandni Chowk branch of the Co-operative Bank, during the period referred above. He could not lay his hands even on the transfer vouchers for the period January 1995 to August 1996.

10. Shri R.C. Sharma unfolds that the Co-operative Bank was amalgamated with the Bank on 08-04-1997, under the scheme framed by the Government of India. Assets and liabilities of the Co-operative Bank were taken over by the Bank. The claimant was partner in M/s. Kohli & Associates, who were Accounts Consultants. M/s. Kohli & Associates used to do accounts balancing work in the Co-operative Bank. Vouchers were prepared by the Co-opertive Bank for making payments to M/s. Kohli & Associates. Recruitment in clerical as well as Officer cadres of the Bank is made by Banking Service Recruitment Board. Sub-staff are engaged, on names of eligible persons being sponsored by Employment Exchange. During the course of his cross examination, he presents that the claimant used to perform duties in the Bank for whole of the day. Claimant was paid his emoluments through vouchers.

11. When facts unfolded by the claimant, Shri Ishwar Singh, Shri Arun Kumar Kurich and Shri R.C. Sharma are appreciated, it emerged over the record that the claimant was working with the Co-operative Bank to perform balancing of accounts. Payment were made to the claimant through vouchers. Claimant received those payments as partner of M/s. Kohli and Associates, which fact is established through Ex. WW1/MB. Claimant admits his signatures on Ex. WW1/MB and explains that it was given by him to the Co-operative Bank. Ex. WW1/MB highlights that receipt for payment of Rs. 4400.00 towards job of balancing of accounts done for August 1996 was given by the claimant to the Co-operative Bank on 07-09-1996. Ex. WW1/MB is written on letter head of M/s. Kohli & Associates, Accounts Consultants, having office at BG-6, 153A, Paschim Vihar, New Delhi. Claimant admits his signatures on voucher for August 1996, which is supported by the receipt of payment, proved as Ex. WW1/MB. In the same fashion, he admits contents of vouchers for the month of July 1996 as well as signatures on receipt for a sum of Rs. 4400.00 paid for July 1996. Contents of vouchers for June 1996 as well as receipt for a sum of Rs. 4400.00 for June 1996 are also not disputed. These documents project that the claimant performed balancing of accounts job with the Co-operative Bank for which he was paid in the capacity of partner of M/s. Kohli & Associates, Accounts Consultants. Shri R.C. Sharma also projected those very facts in his affidavit, Ex. MW1/1. Consequently, it emerged over the record that the Bank wants to project that the claimant, working in the capacity of partner of M/s. Kohli and Associates, Accounts Consultants, was an independent contractor.

12. A short question which is required to be addressed in the present controversy is as to whether the

claimant is an independent contractor or employee of the Co-operative Bank. For an answer, it is expedient to have a glance on factors which distinguishes relationship of master and servant from an independent contract relationship. Identifying mark of a servant is that he should be under the control or supervision of the employer in respect of details of the work. See Chintaman Rao [1958 (2) LLJ 252]. Precedent in Shivanandan Sharma [1955 (1) LLJ 688] projects the instance where the Apex Court considered the test for determining the question whether a person is an "employee" of "independent contractor" and ruled that "supervision and control is the crucial test for determination of the relationship". In Dharangadhara Chemical Works Ltd. [1957 (1) LLJ 477] the Apex Court announced that the test of "supervision and control" may be taken as the prima facie test for determining the relationship of employment. The prima facie test for determining the relationship was held to be the existence of the right in the master to "supervise and control" the work done by the servant not only in matter of directing what work the servant is to do but also the manner in which he shall do his work. But since nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapasle of precise definition. Hence correct method of approach would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The above test was reaffirmed in Chintaman Rao (supra) and was followed by the Apex Court in Shankar Balaji Waze [1962 (1) LLJ 119].

13. In many cases the Apex Court discovered that there was a common practice of using deceptive devices and the so called independent contractors were really agents or workers of the employer posing as independent contractors for the purpose of circumventing the Factories Act 1948 or like statutes which compel employers to meet certain economic and social obligations towards the worker. Such deceptive devices were also noticed by the legislature and with a view to obviate the vices of such devices, the Parliament enacted Beedi and Cigars Workers (Conditions of Employment) Act 1966.

14. In V. P. Gopala Rao [1970 (2) LLJ 59] the Apex Court said that it is a question of fact in each case whether the relationship of master and servant exists between the management and the workman and there no abstract a priori test of the work control required for establishing the contract of service. In recent years "control test" as traditionally formulated has not been treated as an exclusive test. In a large number of cases the court can only perform a balancing operation weighing up the factors which points in one direction and balancing them against those pointing in the opposite direction. See Silver Jubilee Tailoring House [1973 (2) LLJ 495], wherein the Apex Court pointed out that "it is in its application to skilled and particularly professional work the control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do his work, the court has been applying a concept suited to a post age". Thus it is emerging the control is obviously an important factor and in many cases it may still be the decisive factor but it would be wrong to say that in every case it is decisive. The broad distinction between a workman and independent contractor lies in this that while the former agrees himself to work, latter agrees to get other person to work. A person who agrees himself to work and does so he does not cease to be a workman by reason merely of the fact that he gets other person to work along with him and those persons are controlled and paid by him. What determines whether a person is a workman or an independet contractor is whether he has agreed to work personally or not. If he has than he is workman and the fact that he takes assistance from other persons would not affect his status. Reference can be made to D.C. Works Ltd. [1957 (1) LLJ 477]. True test to determine the question as to whether the relationship of master and servant exists beween the particular parties are :

i. Whether the management exercise control over such persons, and

ii. Whether the stipulated time is really at the disposal of the management.

15. Now, facts of the present controversy would be appreciated in the light of law referred above. Claimant agreed to execute the job of balancing of accounts personally. He used to remain under control of the officers of the Co-operative Bank when balancing of accounts was done by him. He was at the disposal of the Co-operative Bank during the time he performed his duties. Test of control and supervision make it apparent that contract agreement is a deceptive document. In fact, the claimant executed the job of balancing of accounts personally and acquired status of an employee. With a view to obviate benefit of labour laws the Co-operative Bank introduced a sham contract. Such a contract was deceptive and entered into with a view to evade compliance of labour laws. The claimant never acquired status of an independent contractor. Consequently it is concluded that the contract agreement, which was executed between the claimant and the management, does not espouse the cause of the Co-operative Bank.

16. The next question would be as to whether an Accounts Consultants can be termed as a workmen within the meaning of Section 2(s) of the Act. At the cost of repetition, it is projected that the claimant was doing balancing of accounts in the Co-operative Bank. Such an

employee, who performs auditing job, compares figures relating to discrepancy in the accounts, compiles entries recorded in Day Book and then tallies it with the respective accounts of the customers, can be held to be doing mainly clerical work. In National Tobacco Company of India [1954 (1) LLJ 160], it was ruled that auditor, employed as touring auditor, preparing figures for sales, tallying sales tax figures etc, was doing mainly clerical work. In Madan Gopal [1956 (1) LLJ 414] person employed as a sub-agent at the main office/branch of the bank was performing the following duties : (i) checking of agency vouchers, (ii) checking and signing of agency statements, (iii) drafting and checking of agency letters, (iv) checking of Current Account ledgers, (v) receiving of local dak, (vi) checking of cash books, (vii) opening and closing of cash, and (viii) receiving and sending of insurance covers. It was ruled therein that he must be held to be a person performing duties of clerical nature. However, his designation or the fact that he was receiving the same salary as that of the agent under whom he had to work, could not be considered to be relevant under circumstances of the case. It was announced therein that despite being a sub-agent, he was performing duties of clerical nature as provided under Section 2(s) of the Act. In Punjab Co-operative Bank Ltd. [1975 (2) LLJ 3373], the Apex Court ruled that an Accountant signing salary bills without any administrative power was a workman.

17. Admittedly, claimant was performing functions of balancing of accounts for the Co-operative Bank. Such job does not require initiative and independence. An Accounts Consultant has to check ledgers, cash book and reconcile transactions done by the customers with those recorded in books by the employee of the Bank. The functions performed by an Accounts Consultant make it apparent tht the Co-operative Bank exercises the same measure of control and could regulate action of the claimant. Test to determine relationship of master and servant, requires two aspects, viz. (i) whether management exercises control over such persons, and (ii) whether the stipulated time is really at the disposal of the management. These twin aspects stand satisfied in the present controversy. Therefore, it is crystal clear that the claimant was clothed with the status of workman within the meaning of Section 2(s) of the Act.

18. Question for consideration would be as to whether the claimant rendered continuous service of 240 days with the Co-oprative Bank in the preceding 12 months from the date of termination of his service? For an answer to this proposition, it would be ascertained as to what the phrase 'continuous service' means. "Continuous Service" has been difined by Section 25-B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service". sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act.

19. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus :

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an inquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

20. In view of above law, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment. For an answer ocular testimony of the claimant shall be construed in the light of documents proved. Vouchers and receipts for the months of June, 1996, July, 1996 and August, 1996 bring it over the record that the claimant worked in spell of three months with the Co-operative Bank in the year 1996. He did balancing of accounts during the period referred above. It has not come over the record that the claimant rendered continuous service with Co-operative Bank for a period of 240 days in preceding 12 months from the date of his alleged termination. He claims that his services were dispensed with by Co-operative Bank on 30-11-1996. However, no document is brought over the record to

establish that he rendered service with the Co-operative Bank till 30-11-1996. Shri Sharma argued that documents were in possessing of the Bank, which were not produced. His thrust of contention has been that adverse inference may be drawn against the Bank and self serving words of the claimant that he continuously worked with the Co-operative Bank, may be relied. Alas ! this contention has no weight. Reply dated 14-11-1996 given by the Chairman to the claimant in response to his application dated 06-11-1996 has been proved as Ex. WW1/MA. Reply, so given, clinches the issue. For the sake of convenience, contents of letter Ex. WW1/M1 are reproduced thus :

> "With reference to your letter dated 06-11-1996, we are at present, not recruiting any Officer in the Bank, which has been placed under moratorium. As such, we have kept your application pending for consideration at the appropriate time, alongwith other candidates, on merits, provided your bio-data meets our requirements".

21. Ex. WW1/MA makes it implicit that vide his letter dated 06-11-1996, claimant requested the Co-operative Bank to recruit him as an Officer in the Bank. Had the claimant been a regular employee of the Co-operative Bank, his request would have been either for regularization of his services or for promotion to the post of Officer. There would have been no occasion for him to request for appointment in the Co-operative Bank. His request for appointment, as is explicit out of the contents of Ex. WW1/M1, makes it clear that he rendered services to Co-operative Bank at intermittent spells. He never worked continuously with the Co-operative Bank. Consequently, it is evident that the claimant had worked with the Co-operative Bank at different spells for short durations.

22. It is a settled proposition of law that the claiment had to lead evidence to show that in fact he worked for 240 days in 12 preceding months from the date of his termination. Mere filing of affidavit cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that the claimant had, in fact, worked for 240 days in a year. Burden to prove that he rendered service for 240 days or more, lies upon the climant, when such claim is denied by the employer. Law to this effect was laid in Range Forest Officer (2002 LLR 339) Issen Deinki [2003 SC (L&S) 113], Rajasthan State Ganganagar's Mills Ltd. [2004 (103) FLR 192] and Municipal Corporation, Faridabad [2004 (8) SSC 195].

23. Workmen can discharge onus on him by adducing cogent evidence, which may be oral or documentary. In a case of an industrial employee, possibility of not providing any appointment letter or wage slip, attendance register and termination letter by an employer cannot be ruled out. In case the workman wants the employer to produce the record and the latter opts not to produce it, the Tribunal may draw inference against the employer. In R.M. Yellatti [2006 (1) SSC 106], Apex Court was confronted with such a proposition wherein law was laid as follows :

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act. In terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the atendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

24. The above position was again reiterated in recent judgements in Shyamal Bhowmik [2006 (1) SCC 337], Sham Lal [2006 VIAD (SC) 1] and Gangaben Laljibhai and others [2006 VIAD (SC) 31].

25. Here, in the case, claimant presents that record was not produced by the Bank. To confirm facts in that regard, he has examined Shri Ishwar Singh and Shri Arun Kumar Kurich. Shri Ishwar Singh had produced Ex. WW2/1 and Ex. WW 2/2. These documents highlight that the claimant did job of 'Revenue Audit' for the Co-operative Bank from August 1994 to December 1994 and was paid for that job. Shri Kurich presents that he could not lay his hands on the records for January 1995 to August 1996. It is not a case where record was intentionally withheld. As projected by the claimant himself, Co-operative Bank amalgamated with the Bank on 08-04-1997. The Co-operative Bank was running into losses and as such, Government of India took a decision and amalgamated it

with the Bank. Records of the Co-operative Bank ought to have handed over to the Bank relating to engagement of the claimant. However it was not done so. Despite non production of records, position stood clarified out of contents of Ex. WW1/MA. As pointed out above, claimant was not working with the Co-operative Bank regularly. He used to work for intermittent spells of short duration. Therefore, it is not a case where adverse inference can be drawn against the Bank for non-production of records.

26. Claimant has not been able to establish that he rendered continuous service for 240 days in preceding 12 months from the date of his alleged termintion. Under these circumstances, provisions of Section 25-F of the Act are not applicalbe. Admittedly, claimant was the sole person working as Accounts Consultant. In such a situation, procedure for retrenchment, as provided in section 25-G of the Act, could not be followed. Since no other person was employed as Accounts Consultant by the Co-operative Bank, provisions of section 25-H of the Act also do not come into play. Act of the Co-operative Bank in not engaging the claimant for another spell is not violative of the provisions of the Act. The claimant is not entitled to any relief. His claim is liable to be brushed aside. Accordingly, an award is passed in favour of the Bank and against the claimant. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 15-11-2012

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 17.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/32/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/47/2008-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S. O. 17.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/32/2008) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 09-11-2012.

[No. L-12012/47/2008-IR (B-II)]

SHEESH RAM, Section Officer

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

NO. CGIT/NGP/32/2008

Party No. 1 : Regional Manager,
Central Bank of India,
Regional Office, Gorakshan Rd.
Akola Distt. Akola (MS).

V/s

Party No. 2 : Shri Pravin Hanumantrao
Shilodkar
R/o. V.H.B. Colony,
Gorakshan Road, Akola,
Distt. Akola
Maharashtra

ORDER

(Dated : 22nd October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Bank of India and their workman, Shri Praveen S/o Hanumantha Rao Shilodkar, for adjudication, as per letter No. L-12012/47/2008-IR (B-II) dated 17-09-2008, with the following schedule :—

> "Whether the action of the management of Central Bank of India in terminating the services of Shri Praveen S/o Shri Hanumantrao Shilodkar, a casual worker in the year 1990 and 1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

The record is put up today on the strength of the advance petition filed by the advocate for the petitioner to take the record on board. Copy of the application has been served on the advocate for the Central Bank of India.

2. Advocate for the petitioner and advocate for the bank are present. The petitioner is also present in person.

3. The petitioner has filed an application supported with an affidavit for withdrawal of the reference. Copy of the application has been served on the advocate for the Bank, who had made endorsement on the body of the application itself of having no objection for withdrawal of the case.

4. The case of the petitioner is that management of Central Bank of India has issued a circular for providing employment to the workers, who have rendered 45 days service with them and as such, he wants to withdraw the case.

5. Perused the record. The Central Government has referred the Industrial Dispute for adjudication in regard to the legality or otherwise of the termination of the services of the petitioner orally in year 1990 and 1999. As the petitioner has received the communication from the bank regarding filling of the post and in view the possibility of his absorption in service by the bank, he wants to withdraw the case. The bank has also no objection for such withdrawal. Hence, in the interest of natural justice, I think it proper to allow the application filed by the petitioner for withdrawal of the case. Hence, it is ordered :—

ORDER

The application filed by the petitioner is allowed. The reference be treated as withdrawn. The application filed by the applicant supported with affidavit is made part of the order.

J. P. CHAND, Presiding Officer

BEFORE THE HON'BLE P.O. CGIT-CUM-LABOUR COURT, NAGPUR

Ref. : 32/2008 FF. 26-10-2012

Party No. 1. Central Bank of India

versus

Party No. 2. Praveen Shilodkar

Application for grant of Permission to withdraw the Reference

The Party No. 2 most respectfully submits, as under :

1. That, the above matter is fixed for 26-10-2012 before this Hon'ble Court for evidence. However, the party No. 1 Bank has issued the circular for providing employment to the workers, who have rendered 45 days service with them.

2. In view of this, the Party No. 1 workman wants to withdraw his matter from this Hon'ble Court and as such the withdraw of the case is prayed for.

Prayer : It is therefore prayed that this Hon'ble Court may be pleased to grant permission to withdraw the Case in the light of above circumstances in the interest of Justice.

Nagpur

Dt. 18-10-2012

PARVEEN H. SHILODKAR
Party No. 2 Workman.

SOLEMN AFFIRMATION

I, Pravin S/o Hanumantrao Shilodkar, aged about 41 years, Occc-Nil, R/o VHB Coloney, LB-46 Gourakshan Road, Akola, presently at Nagpur, do hereby take oath & solemn affirmation that the above application is drafted by my Counsel as per my instruction. The contents in para 1 to 2 are understood by me in Varnacular language. The contents thereof true to my knowledge and information.

Hence this verify and sincegned on 22nd day of October 2012, Nagpur.

PARVEEN H. SHILODKER

Deponent

I Knew & identify the deponent.

(S. M. Gajbhiye)

Advocate

BEFORE THE HON'BLE P.O. CGIT-CUM-LABOUR COURT, NAGPUR

Ref. No. 32/2008 F. F. 26-10-2012

Party No. 1 Central Bank of India

V/s

Party No. 2 Praveen H. Shilodkar

Application for taking the Case on Today's Board

The Party No. 2 named above most respectfully begs to submit, as under :

1. That, the above matter is fixed for evidence on 26-10-2012, before this Hon'ble Court.

2. That, the Party No. 2 Workman wants to withdraw the Reference as the Party No. 1 Bank has issued a circular to provide employment those workers who have rendered more than 45 days services with the Bank.

3. In view of this the workman wants to withdraw the reference.

Prayer : It is therefore prayed that this Hon'ble Court may be pleased to take the above matter on today's board in the interest of Justice.

Nagpur

Dt. : 18-10-2012

PRAVEEN H. SHILODKAR

Party No. 2

4760 GI/12-8

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 18 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 123/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/38/2007-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S.O. 18 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref.No.123/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 9-11-2012.

[No. L-12012/38/2007-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"SHRAM SADAN"
G.G. PALYA, TUMKUR ROAD,
YESHWANTPUR, BANGALORE - 560 022.

Dated : 18th October 2012

PRESENT : Shri S. N. NAVALGUND, Presiding Officer

C. R. No. 123/2007

I Party

Sri G Venkataramu,
No. 22, New No. 101,
1st B Main, Papaiah Garden,
Basveswaranagar,
BANGALORE - 560 079

II Party

The General Manager (P),
Bank of Baroda,
3rd Floor, HJS Chambers, No. 26.
Richmond Road,
BANGALORE - 560 005.

Appearances :

I Party

Shri Muralidhara,
Advocate

II Party

Shri Ramesh Upadhayay,
Advocate

ORDERS ON THE VALIDITY OF DOMESTIC ENQUIRY

1. In this reference by the Central Government vide Order No. L-12012/38/2007-IR(B-II) dated 23-08-2007 for adjudication as to "Whether the action of the management of Bank of Baroda in imposing the punishment of removal from service, with superannuation benefits on Shri G. Venkatramu, Ex-Daftary, Bank of Baroda, Belgaum Branch w.e.f. 2-9-2005 is legal and justified ? If not, to what relief the workman is entitled ?" in view of certain allegations made in the claim statement touching the validity of the Domestic Enquiry that Sh R. Annaiah who was appointed as Enquiry Officer held the enquiry in total disregard to the Principles of Natural Justice submitted his findings to the Disciplinary Authority dated 8-11-2003 holding that he was guilty of the charges and after he submitted his explanation to the enquiry finding to the Disciplinary Authority he made another order dated 25-10-2004 for conducting a De Novo enquiry by appointing Sh. T. G. Shenoy, Senior Branch Manager, Belgaum Branch on the same charge sheet issued to him dated 22-5-2003 on the ground that he found some procedural lapses in the earlier enquiry conducted by Sh. R.Annaiah which was impermissible in law. He also contended Sh. T. G. Shenoy as well held the enquiry in total disregard to the principles of natural justice and procedure and submitted enquiry finding dated 25-4-2005 charge being proved. Based on that finding of the Enquiry Officer Sh. T. G. Shenoy, after giving an opportunity of hearing the Disciplinary Authority passed the impugned order imposing the punishment of removal from service with superannuation benefits by order dated 2-9-2005. He further contended that since the Disciplinary Authority had no authority to make an order to conduct a De Novo enquiry by appointing fresh Enquiry Officer on the same charges his order imposing the punishment based on such second enquiry finding is not sustainable and he is entitled for reinstatement with full backwages, continuity of service and all other consequential benefits. Since in the counter statement it is denied order of De Novo enquiry being impermissible in law further contended as any aberrations in the conduct of the enquiry since has to be corrected to do justice to the parties before the enquiry forum as otherwise it will amount to miscarriage of justice and in order to adopt the procedure and to have a fair play a De Novo enquiry was ordered by the competent authority and no infirmity can be found on this count and more over the I party having participated in the second

enquiry along with Defence Representative of his choice he cannot now turn back and say that order of De Novo enquiry is bad in law and that the second Enquiry Officer has followed all the requisite formalities of conducting the fair and proper enquiry providing all reasonable opportunities to the I party, the Domestic Enquiry conducted by the II party against the I party be held as fair and proper the following issues came to formulated as a Preliminary Issues:

Preliminary Issue

"Whether the Domestic Enquiry held against the I party by the II Party is fair and proper ?"

Additional Preliminary Issue

"Whether the management of Bank of Baroda is legal in holding DE NOVO enquiry against the I party/ Workman?"

2. In order to substantiate these issues on behalf of the II party while examining Sh. T Gopal Krishna Shenoy the Second Enquiry Officer as MW1 Ex M-1 to Ex M-15 the detailed description of which are narrated in the annexure got exhibited. Interalia, on behalf of the I party while filing his affidavit examining him on oath as WW 1 no documents got exhibited.

3. With the above pleadings, oral and documentary evidence touching the fairness or otherwise of the Domestic Enquiry the learned advocates appearing for both sides addressed their arguments.

4. The learned advocate appearing for the I party while submitting that no material being placed by the II party as to why a decision was taken to hold a De Novo enquiry after Sh. R . Annaiah submitted his enquiry finding it can be said that the said enquiry finding was set aside by the Disciplinary Authority in the absence of pointing out any provision enabling/empowering the Disciplinary Authority to order for De Novo Enquiry it has to be held that he had no authority to order for De Novo enquiry and his order imposing the impugned punishment is without jurisdiction and order for reinstatement of the I party with full backwages, continuity of service and all other consequential benefits shall have to be given to him. He also urged when the Disciplinary Authority oppoints an Enquiry Officer on Enquiry Officer submitting his finding he may accept the Enquiry finding or reject the enquiry finding after giving an opportunity of hearing to the CSE giving his reasons and then by issuing show cause notice as to why certain punishment should not be imposed again after giving an opportunity of hearing to the CSE pass appropriate order and cannot order for holding a De Novo enquiry. Thus he urged the Disciplinary Authority having had no power/authority to order for De Novo enquiry the one ordered by him being without jurisdiction his action based on the finding of such De Novo trial is not sustainable as such the I party is entitled for reinstatement with full backwages, continuity of service and all other consequential benefits. Alternatively he also urged if this tribunal is to come to a conclusion/decision that the Disciplinary Authority had authority to order for De Novo Trial even in the second enquiry the principles of natural justice being not followed the Domestic Enquiry conducted through the second Enquiry Officer is liable to be set aside. The learned advocate appearing for the I party in support of his argument cited the following decisions:

1. 1971-I-LLJ P 427 - K R Deb vs The Collector of Central Excise Shillong.

2. AIR 1975 SC 2277- The State of Assam and another vs. J N Roy.

3. 2003 III LLJ 557 SC - Union of India vs. K D pandey and another.

4. 1968 II LLJ P 822 - Prabhu (CD) vs. Deputy Commissioner, Mangalore.

5. 2003 II LLJ P 74 - Senior Superintendent of Post Offices., Bangalore South Division and others vs. V B Ravindranathan

6. 1993 I LLJ 1081 - Bishnu Prasad vs. Bohindar Gopinath Mohanda vs. Chief General Manager, State Bank of India and others

7. 2004 II LLJ P 1000 - Bhihar Electricity Board and others vs. Brij Mohan Prasad and others

8. .2004 II LLJ 721 (AP DB) - Shaik Mahd.Hussain s/o Sh. Mdar Saheb and others vs. A P State Wakf Board rep. its Chief Executive Officer, Hyderabad

9. 1997 II LLJ P 1146 - Chattu Jathan vs. Bombay Dock Labour Board & Ors.

10. 1993 II LLJ P 380 - Chander Singh vs. Delhi Development Authority and another

11. 1997 I LLJ P 222 - M Kolandani Gounder vs. The Divisional Engineer, T NEB Thuraiyur & Ors.

12. 2009 II LLJ P 549 - Subrata Kumar Choudhury vs. State Bank of India and others

13. ILR 2009 KAR 318- Sri Sannegowda vs. Managing Director, Karnataka State Road Transport Corporation and others.

Interalia, the learned advocate appearing for the II party without bringing to my notice any provision enabling/authorizing the Disciplinary Authority to order for De Novo trial simply urged that since the CSE filed objection to the first enquiry finding contending that it was conducted behind his back the Disciplinary Authority while accepting the said contention set aside the first enquiry finding and ordered for De Novo enquiry as such no fault could be found in this method adopted by the

Disciplinary Authority. The learned advocate appearing for the II party in support of his arguments cited decision reported in AIR 2003 Supreme Court 1100.

5. After going through the decisions cited by the learned advocates appearing for both the sides having found that Disciplinary Authority must be empowered to order for a De Novo enquiry since neither in the counter statement nor in the arguments addressed by the II party counsel any rule/source of power under which the Disciplinary Authority was empowered to direct for holding a De Novo enquiry was pointed out an opportunity was given to the learned advocate representing the II party to point out the rule/source of power under which the Disciplinary Authority in the present case was competent to hold the De Novo enquiry. The learned advocate after taking two adjournments on the third occasion submitted that he has been informed by the Disciplinary Authority that there is no specific provision enabling the Disciplinary Authority to order for De Novo enquiry in BPS and that he has passed order for De Novo enquiry on the request made by the CSE saying that Enquiry Officer had not conducted enquiry properly. As against this submission the learned advocate appearing for the I party urged that of course the CSE/I party in his explanation to the enquiry finding of the first Enquiry Officer pointed out the blatant lacunas in conducting the enquiry but had not made any representation or request to make a De Novo enquiry as such the Disciplinary Authority erred in ordering for De Novo enquiry and thus he urged to answer the second Preliminary Issue in the negative and to order for reinstatement of I party with full backwages, continuity of service and other consequential benefits.

6. In view of the facts narrated by me above, the points that arises for my consideration are:

1. Whether Disciplinary Authority in the instant case had power or authority to order for De Novo Enquiry ?

2. If yes, whether the second Enquiry Officer conducted the enquiry providing all required fair and proper opportunities to the I party ?

7. On appreciation of the admitted facts and circumstances of the case in the light of the arguments addressed by the learned advocates appearing for both the sides my finding on Point No.1 is in the negative and No.2 as does not survive for consideration and the I party is entitled for reinstatement with full backwages, continuity of service and all other consequential benefits that he would have received in the absence of the impugned punishment imposed against him for the following reasons:

REASONS

8. **Point No.1:** As already highlighted by me above there is no dispute in the first instance the Disciplinary Authority while ordering for holding Domestic Enquiry against the I party appointed Sh. R Annaiah as the Enquiry Officer and after the said Enquiry Officer submitted his enquiry finding as the charge being proved he served the copy of the enquiry finding on the I party and called for his explanation and on he submitting his explanation it appears he accepted his explanation and ordered for De novo enquiry by appointing Sh. T G K Shenoy, MW 1 as Enquiry Officer. Since the very authority of Disciplinary Authority in ordering for De Novo enquiry is questioned the decision whether he had such authority or not goes to the route of the matter which touches the very jurisdiction/competency of the Disciplinary Authority to hold a De Novo Enquiry. In the only citation relied on by the learned advocate appearing for the II party reported in AIR 2003 SC 1100 what is held that where Disciplinary Authority were to disagree with some findings of the Enquiry Officer it is incumbent on him to give an opportunity of hearing to delinquent officer and then pass on order as such it does not through any light or relevant in concidering the matter in issue in this case. There cannot be any dispute that a Disciplinary Authority delegating his power of enquiry by appointing an Enquiry Officer to differ from the findings of the Enquiry Officer and reversing the same on the basis of the evidence placed in the enquiry but that does not mean that he can order for a De Novo Enquiry. In the recent decision of Hon'ble High Court of Karnataka in the case of Sanne Gowda vs. KSRTC and others reported in ILR 2009 Page 318 one of the decision cited by the learned advocate appearing for the I party, it is unequivocally held, the Disciplinary Authority having no jurisdiction to initiate a re-enquiry or a fresh enquiry in respect of the very same charges and such an act on the part of the Disciplinary Authority is impermissible under regulations and same is without jurisdiction and consequently the findings of the Second Enquiry Officer are vitiated, the facts and circumstances of this decision cited by the learned advocate appearing for the I party aptly applicable to the case on hand on the facts not in dispute. Under the circumstances, the contention of the I party that the decision of Disciplinary Authority to hold a De Novo enquiry on the same charges being without jurisdiction impugned punishment imposed against him based on such a enquiry finding is unsustainable and is entitled for reinstatement with full backwages, continuity of service and all other consequential benefits that he would have received in the absence of the impugned order of removal from service has all the force. Accordingly, I arrive at the conclusion of answering Point No.1 in the Negative.

9. **Point No. 2 :** In view of my finding on Point No.1 this point does not survive for consideration because appointing of the very Second Enquiry Officer by the Disciplinary Authority was without jurisdiction no reliance can be placed on such enquiry and findings given in that enquiry. Hence this point is answered accordingly.

10. In view of my decision the Disciplinary Authority in the case on hand had no authority/jurisdiction to order for a second enquiry (De Novo Enquiry) on the same charge on which enquiry was already held the impugned action of the Disciplinary Authority relying upon the finding of the second Enquiry Officer is unsustainable and the first party is entitled for reinstatement with full back wages, continuity of service and all other consequential benefits that he would have received in the absence of removal from service. In the result, I pass the following:

ORDER

The additional Preliminary Issue "Whether the management of Bank of Baroda is legal in holding DE NOVO enquiry against the I Party/Workman" is answered in the Negative and first issue "Whether the Domestic Enquiry held against the I party by the II Party is fair and proper" as does not survive for the consideration and consequently the punishment of removal of the I party workman is set aside and he is ordered to be reinstated in service with full backwages, continuity of service and all other consequential benefits that he would have received in the absence of his removal from service. Accordingly, the reference is finally disposed off and the office is directed to forward the copy of the order to the Ministry for notification as an award.

'(Dictated to UDC, transcribed by him, corrected and signed by me on 18th October 2012)

S. N. NAVALGUND, Presiding Officer

Annexure - I

Witness examined:

MW 1 - Sh. T. Gopalakrishna Shenoy, Enquiry Officer, Chief Manager, Hyderabad

WW 1 - Sh. G. Venkataramy, I party/Workman

Documents exhibited on behalf of Management :

Ex. M-1 - Office copy of the charge sheet dated 22-5-2003 issued to the I party.

Ex. M-2 - Office copy of letter addressed to Enquiry Officer dated 13-12-2004 by the Disciplinary Authority.

Ex. M -3 - Office Copy of appointment of Presenting Officer dated 13-12-2004 by the Assistant General Manager.

Ex. M-4 - Copy of Enquiry Notice dated 1-1-2005 issued by the informing the I party that Preliminary Enquiry will be held on 6th January 2005 and asking him to attend.

Ex. M-5 - Copy of the Proceedings of Preliminary Enquiry held on 6-1-2005,

Ex. M-6-Original/Copy of Enquiry Proceedings dated 24-1-2005.

4760 GI/12-9

Ex. M-7-Copy of the Enquiry Notice dated 21-2-2005 issued by the Enquiry Officer fixing the date of Enquiry to 25-2-2005.

Ex. M-8- Original Enquiry Proceedings dated 25-2-2005:

Ex. M-9 -Original Written Brief of the Presenting Officer dated 7-3-2005 along with covering letter addressed to Enquiry Officer.

Ex.M-10-Original Written Brief of the Defence Representative dated 30-3-2005 addressed to Enquiry Officer.

Ex. M-11-Original Enquiry Report dated 25-4-2005 of the Enquiry Officer.

Ex. M-12-Original Personal Hearing proceedings of the Disciplinary Authority dated 26-8-2005.

Ex M-13 - Copy of the Order of the Disciplinary Authority dated 2-9-2005.

Ex. M-14 - Copy of the Appeal of the I party dated 05.10.2005 to the Appellate Authority.

Ex. M-15 - Original Order of the Appellate Authority dated 20-7-2006.

Documents exhibited on behalf of Workman by consent:

Ex. W-1- Copy of the notice of enquiry dated 18-7-2003 issued by Sri R Annaiah, Enquiry Officer.

Ex. W-2- Copy of the proceedings of the enquiry.

Ex. W-3- Copy of the written brief of the II Party/ Management

Ex. W -4 - Copy of the written brief of the I party/workman.

Ex. W -5 - Copy of the letter dated 18-12-2003 with enquiry report of Sri R Annaiah, Enquiry Officer.

Ex. W -6 - Copy of the statement of objection to the enquiry report filed by the I party/workman.

Ex. W -7 - Copy of the order dated 25-10-2004.

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 19 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इन्टरनेशनल एअरपोर्ट अथॉरटी आफ इंडिया दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.1 दिल्ली के पंचाट (संदर्भ संख्या 226/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-2012 को प्राप्त हुआ था ।

[सं. एल-11212/6/1995-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 7th December, 2012

S.O. 19 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 226/2011) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management M/s. International Airport Authority of India (Delhi) and their workman, which was received by the Central Government on 22-11-2012.

[No. L-11212/6/1995-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 ,KARKARDOOMA COURTS COMPLEX, DELHI.

I.D.No. 226/2011

Shri Joginder Kumar
S/o Sh.Raghubir Singh,
R/o Village & P.O. Holambi Khurd
Delhi - 110082

.....Workman

Versus

The Chief Engineer,
International Airport Authority of India,
(Operational Office),
Gurgaon Road, New Delhi

... Management

AWARD

A Junior Draftsman (Engg.) was appointed on probation by International Airports Authority of India (in short the Authority) vide order No.PERS/II/1101/10/92/ 528 dated 15-5-1992. He joined his duties on 1-6-1992. His period of probation was for one year. When his performance was not found satisfactory, his period of probation was extended for another one year in four spells. Since he failed to improve his work and conduct, the Authority took a decision to terminate his services in terms of Clause 3 of his appointment letter and Clause 12(2) of IAAI (Conditions of Service) Regulations 1983 (in short the Regulations). Aggrieved by the said act, he raised an industrial dispute before the Conciliation Officer. Since the Authority contested his claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-11212/06/1995-.IR(Misc.), New Delhi dated 7-2-1996, with following terms:

"Whether the action of the management of Airport Authority of India (International Division) in terminating services of Shri Joginder Kumar, Junior Draftsman (Engg.) with effect from 31-5- 1994 is just, fair and legal ? If not, what relief concerned workman is entitled to ?

2. The Junior Draftsman (Engg.), namely, Shri Joginder Kumar filed his claim statement pleading that he was appointed by the Authority vide letter dated 15-5-1992. He rendered continuous service with the Authority for a period of two years. He worked to the entire satisfaction of the Authority. He has been very punctual and never gave any chance of complaint to his superiors.

3. On 3-6-1994, he felt pain chest and approached Dr. Naresh Sethi for treatment. The doctor advised him bed rest till 9-6-1994. He informed the Authority about his ailment, pleads the claimant. Medical certificate was also transmitted alongwith leave application. When he again approached the doctor on 9-6-1994 the latter had advised him further rest upto 17-6-1994. Leave application, alongwith medical certificate, was transmitted. When he became fit to resume his duties, he went to join his duties on 13-7-1994. He was not allowed to join his duties. His services were terminated by the Executive Director (Personnel) under Clause 12(2) of the Regulations.

4. The claimant presents that. he was not served with any show cause notice or charge sheet by the Authority. No enquiry was conducted against him. No opportunity to explain his conduct was accorded. His removal from service is violative of the principles of natural justice and fair play. No notice or pay in lieu thereof and retrenchment compensation was given. Action of the Authority is violative of the provisions of Section 25F of the Industrial Disputes Act, 1947(in short the Act). He claims that an award may be passed in his favour, directing the Authority to reinstate him in service with continuity and full back wages.

5. Claim was demurred by the Authority pleading that services of the claimant were dispensed with within the extended period of probation in terms of Clause 12(2) of the Regulations. His removal from service was a discharge simpliciter. Action of the Authority does not amount to retrenchment. Provisions of Section 25F of the Act were not attracted. It was not incumbent upon the Authority to give any notice or pay in lieu thereof to the claimant. There was no requirement to pay compensation to the claimant since termination of his service did not amount to retrenchment.

6. The Authority pleads that the claimant was appointed to the post of Junior Draftsman (Engg.) vide letter No. PERS /II/11 01/1 0/92/ 528 dated 15-5-1992. His initial appointment was on probation for a period of one year from the date he assumed charge of the post. Since his' work and conduct was not found satisfactory, his probation was extended for a spell of three months. When

his performance did not improve, his probation was extended for another quarter of the year. It was again extended for a period of three months and lastly extended upto 31-5-1994. During extended period of probation, it was observed that no improvement was shown by the claimant in performance, despite counseling. His conduct was also found to be unsatisfactory. Ultimately the Authority took decision to dispense with his services under clause 12(2) of the Regulations, vide memo No.PERS/II/1007/1512/92/1042 dated 31-5-94. The above memorandum was sent at residential address of the claimant by registered post. The postman visited his residence on 2-6-1994, 3-6-1994, 4-6-1994, (5-6-1994 was a Sunday), 6-6-1994 and 7-6-1994. Thereafter, the letter was returned back with the remarks that the addressee was not found at home. These facts make it clear that the claimant was not ill but made a false pretext in his claim statement in that regard. The Authority projects that no show cause notice or charge sheet was served upon him. There was no occasion to offer him an opportunity of being heard, since no punitive action was taken. Termination of his services was on account of his unsatisfactory conduct, during period of his probation. No case is there to award reinstatement in service. Claim put forward is liable to be dismissed being devoid of merits, pleads the Authority.

7. Vide order No. Z-22012/6/2007-IR(C-II), New Delhi dated 11-2-2008, case was transferred to Central Government Industrial Tribunal No.II, New Delhi by the appropriate Government for adjudication. It was retransferred to this Tribunal, vide order No.Z-22012/6/2007-IR(C-II), New Delhi dated 30-3-2010 for adjudication.

8. Claimant has Examined himself in support of his claim. Shri A.K. Taneja and Shri Rattan Lal were examined by the Authority to establish its case. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. Shri Surender Bhardwaj, authorized representative, advanced arguments on behalf of the claimant. Shri Feroz Ahmed, authorised representative, presented facts on behalf of the Authority. I have given my careful considerations to the arguments advances af the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

10. In his affidavit, Ex.WW1/A, tendered as evidence, claimant swears that he was appointed as Junior Draftsman(Engg) by the Authority. He rendered two years service, which was satisfactory. He was very punctual in his duties. No charge sheet was served upon him. No enquiry was conducted against him. On 12-2-1993, he pointed out certain mistakes in the drawing of Ms.Vasanthi Suresh, and as such she called him names, relating to his caste. He made a complaint against her to Shri Sachdeva, but no action was taken. Shri Sachdeva threatened him with dire consequences. In May 1994, he felt pain in chest and was treated by Shri Suresh Sethi. He remained on medical leave upto 17-6-1994. He informed about his illness through registered post. On 13-7-1994, he went to resume his duties, but was not allowed to do so. His services were terminated by the Authority on 31-5-1994, without giving one months' notice, or pay in lieu thereof and retrenchment compensation. During course of cross examination, he concedes that his period of probation was extended for another year. He further admits that his correct residential address is written on letter Ex.WW1/M9. He presents that Ex.WW1/M7 was written by him under pressure.

11. In his testimony, Shri A.K. Taneja, presents that Shri Joginder Kumar was on probation for a period of one year. Since his performance was not satisfactory, his probation was extended for another period of one year in four spells of three months each. Shri Joginder Kumar took charge of his duties on 1-6-1992 and his period of probation was extended upto 31-5-1994, Since his services were not satisfactory, he was discharged on 31-5-1994. Same facts were brought over the record through testimony of Shri Ratan Lal.

12. When facts unfolded by the claimant, Shri Taneja and Shri Ratan Lal were appreciated, it came to light that the claimant took over charge for the post of Junior Draftsman(Engg.) on 1-6-1992. His letter of appointment, which is Ex.WW1/M1, make it clear that he was placed on probation for a period of one year from 1-6-1992. It was contemplated in his appointment letter that his period of probation can be extended upon his performance. Authority had mentioned in bold words, in the letter of appointment, that his services will not be regarded as confirmed until a letter of confirmation is issued to that effect. Therefore, it is evident that the claimant was well aware that his services would be confirmed on successful completion of period of probation. Since the claimant did not perform well, his period of probation was extended till 31-5-1994, in four spells of three months each. His performance was not found satisfactory during the extended period of probation, hence his services were dispensed with on 31-5-1994, in terms of Clause 12(2) of the Regulations. The Authority had established that in letter of appointment it was specifically mentioned that confirmation of the claimant at the end of the probationary 'Period was subject to his performance being found to be satisfactory.

13. A probationer does not automatically attain permanent status on expiry of his probation. If he is neither discharged nor confirmed, he continues to serve as a probationer until otherwise dealt with. Therefore, in the absence of anything contained in the contract to the contrary nothing would prevent the employer from extending the period of probation for a further reasonable period. The purpose of placing a person on probation is to try him during period of probation to assess his suitability for the job. If an employee who is on probation is removed

from his service during his period of probation by order of termination simpliciter, it cannot be said that the order was stigmatic. The principle of law relating to discharge under contract and discharge simpliciter were extended to the discharge of probationer by the Supreme Court in Express Newspaper Ltd. [1964 (I) LLJ 9]. The facts of the case were that a journalist was appointed on probation for a period of 6 months and was to be confirmed on being found suitable for the job. Before the expiry of period of probation the employer terminated his services on the ground that his work was not satisfactory. The journalist challenged his discharge on the ground that it was malafide and unfair labour practice on the part of the employer. The employer pleaded that the journalist was appointed on probation, hence termination of his service on account of unsatisfactory work was well within rights. The Apex Court recognized the right of the employer to terminate service of a probationer at the end of the period of probation. The observations made by the Apex Courts are extracted thus:

> "there can, in our opinion be no doubt about the position in law that an employee appointed on probation for 6 months continues as probationer even after the period of 6 months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for 6 months give the employer no right to terminate the service of an employee before 6 months had expired except on the ground of misconduct or other sufficient reasons in which case even the service of a permanent employee could be terminated at the end of the 6 months period the employer can either confirm him or terminate his services because his performance is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination the employee continues to be in service as a probationer".

14. The distinction was maintained by the Apex Court - between cases of termination of employment of a probationer before period. of probation had expired and the cases where the employer exercise his inherent right either to confirm or to terminate the employment of the probationer at the end of the period of probation. When an employee appointed on probation for a specific period is allowed to continue in the post after the expiry of that period without any specific order of confirmation, he continues in his post as a probationer only and acquires no substantive right to the post in the absence of any stipulation to the contrary in the original order of appointment or service rules. When an employee is allowed to continue atter end of period of probation, necessary implication would follow that his period of probation has been extended and it cannot be concluded that he should be deemed to have been confirmed Law to this effect was laid by the Apex Court in Dharam Singh (AIR 1968 SC 1210). Consequently it is clear that an express order of confirmation is necessary to give an employee substantive right to the post and from the mere fact that he is allowed to continue in the post after the end of period of probation, it is not possible to hold that he should be deemed to have been confirmed. In unit Trust of India [1993 (I) LLJ 240] the Apex Court announced that the vary purpose of putting a person on probation is to watch his performance.

15. Whether assessment made by the employer about suitability of the employee can be weighed by an Industrial Adjudicator ? It is a settled proposition that assessment to the effect that service of a probationer is satisfactory or not rests with the satisfaction of the employer. Such satisfaction could be objectively assessed and employer is not bound to give any reason when he does not confirm a probationer on expiry of the period of probation. However the industrial adjudication may call upon the employer to put reason for not confirming an employee when he finds the order laced with malafide. In Upkar Machinery Ltd., [1996 (1) LLJ 398] the Apex Court ruled that when validity of termination of services, during period of probation without notice and without assigning any reason, is under challenge in that situation Industrial Adjudicator Would be competent to find out whether the order of termination was bonafide exercise of power conferred by the contract. In Brook Bond India (Pvt.) Ltd., [1993 (II) LLJ 454] workman was appointed in the first instance for a period of six months, extendable for a further period of three months or more in absolute discretion of the employer. The terms of appointment further provided that the employer had a right to terminate the services of a probationer, "during the period of probation or extended period of probation or before confirmation in writing, without notice and without assigning reasons whatsoever." Service was terminated within the period of probation. During the course of adjudication the employer adduced no evidence to show that the work of probationer was unsatisfactory. The Apex Court ruled that the order of terminating the service of a probationer was capricious and unreasonable.The termination was held to be not justified. The above precedents make it is clear that an Industrial Adjudicator has a right to see whether the order of termination is malafide or whether it amounts to victimization or unfair labour practice.

16. Whether the claimant has been able to show that termination of his service was a malafide act or had amounted to unfair labour practice on the part of the Authority. At the cost of repetition, it is projected that the claimant admits that after expiry of period of probation, as mentioned in the appointment letter, his probation was extended for another year. Shri Taneja and Shri Ratan Lal has been able to bring it over the record that his probation was extended in four spells of three months each when his performance was found not to be satisfactory. As highlighted by the Authority, performance of the claimant

was poor and unsatisfactory. Memos were issued to him in order to enable him to improve his performance. Ex.WW1/M6 brings it over record that when his performance was not found to be satisfactory, his period of probation was further extended from 1-3-1994 to 31-5-1994. In spite of counselling, the claimant failed to improve his work performance. His conduct was also found to be unsatisfactory. He did not improve, rather, he harassed a lady colleague, which fact emerged out of his appraisal report for the period 1-3-1994 to 31-5-1994. Consequently, it is clear that the Authority has been able to bring it over the record that work and performance of the claimant was not satisfactory. Extension of period of his probation at different spells is found to be in order.

17. When claimant failed to improve his work performance during the extended period of probation, ending on 31-5-1994, the competent Authority was of the view that no useful purpose Would be served to retain him in service. While using terms of Clause 3 of appointment letter and clause 12(2) of the Regulations, services of the claimant were dispensed with. It is apparent that the order, passed by the competent Authority, projects that is a discharge simpliciter. No punitive action was taken.

18. Whether termination of services of claimant amounts to retrenchment ? For an answer, definition of the term retrenchment is to be construed. Clause (00) of Section 2 of the Act defines retienchment. For the sake of convenience, the said definition is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

19. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1) and Mahabir (1979 (II) LLJ 363).

20. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of Section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and- Balbir Singh (1990 (1) LLJ. 443). On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

> "(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workman,
>
> (ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under Section 2(oo)(bb),

(iii) that the provisions of Section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of Section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

21. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of Section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

22. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of Section 2(oo) of the Act, in C.M.Venugopal (1994 (1) LLJ 597). As per fact of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

23. As projected above, the claimant joined the authorities on 1-6-1992. His appointment letter Ex.WW1/M1 contemplates that the claimant shall remain on probation for a period of 1 year which can be extended depending upon his performance. It was further provided in clause 3 of his appointment letter that his services were liable to be terminated without notice or without assigning any reasons at any time at the pure discretion of the Authority. His probation was extended for another year on four spells of three months each. His services were dispensed with relying terms and conditions contained in appointment letter Ex.WW1/M1 and regulation 12(2) of the Regulations. Thus, it is evident that services of the claimant were dispensed with in terms of contract of his service. His case squarely falls within sub-clause (bb) of clause (oo) of Section 2 of the Act, hence action of the Authority does not amount to retrenchment.

31. Since the action of the Authority does not amount to retrenchment, there was no obligation on the part of the Authority to give one months' notice or pay in lieu thereof and retrenchment compensation to the claimant. Action of the Authority is fair and legal. Claimant is not entitled to any relief. His claim statement is, accordingly, brushed aside. An award is passed. It be sent to the appropriate government for publication.

Dated: 31-10-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 20 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डालमा इनरजी एल एल सी बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 21/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-2012 को प्राप्त हुआ था ।

[सं. एल-30012/17/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 7th December, 2012

S.O. 20 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 21/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management M/s. Dalma Energy LLC (Baroda) and their workman, which was received by the Central Government on 22-11-2012.

[No. L-30012/17/2010-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, AHMEDABAD

Present. . . . .

Binay Kumar Sinha,
Presiding Officer,
CGIT-cum- Labour Court,
Ahmedabad, Dated 15th October-2012

Reference: CGITA of 21/2011

The General Manager,
M/s. Dalma Energy LIC,
Project Office, 303-305,
"Rubellite Hub", 32, Ajit Nagar,
BPC Road, Nr. Urmi Crossing,
Akogta, Baroda.

...First Party.

And their workman

Shri R. Krishnamurthy,
C/o. Chandrakant K. Gore,
Kanik's Building,
Dandia Bazar Char Rasta,
Vadodara.

...Second Party

For the first party : Shri Y. N. Pandya, Advocate
Shri D.V. Vakil, Advocate

For the second party : R. Krishnamurthy
(workman himself)

AWARD

As per order No. L-30012/17/2010- (IR (M)), New Delhi dated 1-12-2010, the Central Government/Ministry of Labour referred the dispute under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947, for adjudication to the Industrial Tribunal, Baroda by formulating the terms of reference under the schedule:-

SCHEDULE

"Whether the action of the management of M/s. Dalma Energy LLC, Baroda in terminating the services of Shri R. Krishnamurthy w.e.f. 12-3-2009 is just and legal ? What relief of the workman concerned is entitled to and from which date?"

2. On receiving the reference order it was registered as reference CGIT case and notices were issued to the parties for filing their pleadings.

3. On 15th October-2012 the management of first party Dalma Energy appeared through lawyer by filing Vakalatnama at Ext.3 in favour of Shri D.V. Vakil and Y. N. Pandya and also files an application at Ext. 4 to the effect that the first party company and the second party workman have arrived at full and final settlement outside the court by payment through cheque of Rs. 93,784 and Rs. 20, 391 and that the second party give undertaking that he is getting aforesaid amount by the company byway of full and final settlement and the workman concerned have withdraw the case. Also undertaking of the second party workman R. Krishnamurthy made before the notary publish on 5-4-2012 is filed at Ext. 5 in support of full and final settlement and getting the amount from the first party company and for withdrawing the reference case. On behalf of the first party another pursis of the second party workman R. Krishnamurthy at Ext. 6 has been filed to the effect that the dispute with the first party company has been settled and I have waived all my claims against first party company including reinstatement and other benefits byway of full and final settlement. This also contains the signature and stamp of the notary public which is dated 5-4-2012. Along with the Annexure-B marked Ext. 6 the Xerox of receipt has been attached towards receiving a sum of Rs. 93,784 vide cheque No. 992759 dated 4-4-2012 drawn on HDFC Bank Ltd, Baroda towards full and final settlement of all my claims against the company and also a sum of Rs. 20,391vide cheque No. 176272 dated 4-4-2012 drawn on Vijaya Bank, Vadodara towards full and final settlement of gratuity.

4. The first party through its lawyer Shri D.V. Vakil moved. Also perused Exts. 4,5,6 and 7. 1st party has prayed for disposal of the reference since second party workman has clearly intended from withdrawing from this reference case. Heard both parties. I have also perused the record and the documents filed today. It appears that the second party has settled his dispute with the first party employer company towards full and final settlement and has received a sum of Rs. 93, 784 towards his full and final settlement of claim against the first party company and a sum of Rs. 20,391 towards full and final settlement of gratuity and the second party has given clear undertaking at Ext. 5 for withdrawing from contesting the reference case.

For the reasons noted above this reference case is disposed of and following Reference is dismissed order is passed as withdrawn by the second party on full and final settlement as per undertaking Ext. 5. Let the undertaking at Ext. 5 and the withdrawal pursis at Ext. 6 and the copy of recipt at Ext. 7 together with the applications of the first party at Ext. 4 be made part of the award and to be kept in the file.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 21.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 19/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12011/55/2006-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S.O. 21 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute Between the employers in relation to the management of Punjab National Bank and which was received by the Central Government on 14-11-2012

[No. L-12011/55/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer Sh. N. K. Purohit

Industrial Dispute No. 19 of 2007

Reference No. L-12011/55/2006-IR (B-II) Dated : 12-2-2007

The General Secretary,
Punjab National Bank Employees' Union (Raj.)
C/o PNB, Cinema Road,
Ajmer-305001

V/s

The General Manager,
Punjab National Bank
House-2, Nehru Place,
Tonk Road, Jaipur,

Present :

For the applicant Union : Ex-Party

For the Non-applicant : Sh. Surendra Singh

AWARD

26-10-2012

1.The Central Government in exercise of the powers conferred under clause (d) of sub sections 1 and 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial disputes to this tribunal for adjudication :—

> "Whether the action of the management of Punjab National Bank in re-fixingy reducing the pay of 24 Armed Guards (as per the list enclosed) in the State of Rajasthan, Zonal Office on the basis of staff Circular No. 43/94 dated 12-12-94 is legal and justified? If not, to what relief are the concerned workmen entitled?"

2. It is pertinent to mention that as per above reference order dated 12-02-07 the dispute is pertaining to 24 Armed Guards (as per the list enclosed). The said list was not found enclosed with the reference order, therefore, this fact was brought in the notice of the Ministry of Labour. Thereafter, a list of 25 concerned workmen of the dispute has been sent vide letter dated nil /7/2012 and it has been informed that the number of workmen in the list may be read as 25 instead of 24.

3.The union in its claim statement has pleaded that the pay of the Armed Guards (as per list enclosed with the reference order) has been reduced/ re-fixed to their disadvantage vide circular no.43/94 dated 12-12-94 without the grant of any opportunity of hearing to them. It has further been pleaded that the validity of the said circular was challenged by some other workmen before Raj. High Court in writ petition no. 1722/95 & vide judgment dated 24-8-2000, the same has been declared illegal & against the principal of natural justice. But the benefit of the said judgment was not given to those workmen who were not party in the writ petition. The union made request to give benefit of said decision to the workmen named in the above list. Thereafter, a settlement in this regard arrived at between the union and the employer on 26-04-04 but the said settlement has not been implemented. The union has also pleaded that the benefits given to the workmen cannot be altered without complying with provisions of Sec 9-A of the I.D.Act.

4. Thus, the Union has prayed that the action of the employer in re-fixing and reducing the pay on the basis of circular 12-12-94 be declared illegal and directions be given to the non applicant to pay amount of reduced emoluments to the workman with 25% interest.

5. In reply, the management of the bank has averred that benefits to the Ex-Army Man were given by the bank vide PDCL dated 21-08-86 in compliance with the direction of Govt. of India and the impugned order dated 12-12-94 has also been issued in compliance of the directions of the Govt. of India. Thus, the union is not entitled to challenge the impugned order on the basis of equity. It has been further averred that Govt. of India has not been made party. It has also been averred that the impugned order has been challenged at belated stage. Therefore, the claim is not maintainable.

6. None appeared on behalf of the union at the stage of filing rejoinder therefore, ex-parte proceedings were drawn against the union & case was fixed for evidence of the non-applicant.

7. In evidence, the non-applicant has produced the affidavit of Sh.Kunj Bihari Bagdi in support of its case.

8. In documentary evidence, the non applicant has produced letters of the Indian Bank Association dated 13-03-92 (Ex-M 1), 8-09-93(Ex-M2), 10-11-94(Ex-M3), circular no. 43/94 dated 12-12-94 (Ex-M4), copy of the decision of Punjab & Haryana High Court passed C.W.P. 109/98 on 19-08-99 and copy of the decision of Hon'ble Supreme Court in SLP (civil) 3186/3210/2000 dt: 3-3-2000 (Ex-M5), copy of the decision Hon'ble Raj. High Court in SB CW petition no 1722/95 dated 24-08-2000(Ex-M6), copy of the letter of HRD Division dated 14-01-04 (Ex-M7).

9. Heard learned representative for the non applicant and perused the relevant record.

10. Learned representative for the non-applicant submitted that as per decisions of Hon'ble P&H High Court (Ex-M5), the non-applicant was given liberty to proceed afresh in accordance with the principal of natural justice. In pursuance of the said decision & decision of Hon'ble Raj. High Court & Hon'ble Supreme Court

direction to issue show-cause notice have been given. He further submitted that impugned order has not been held illegal, only action of recovery in pursuance of the impugned order has been held illegal.

11. I have given my thoughtful consideration to the above submissions.

12. Upon perusal of the evidence of the management witness Sh. Kunj Bihari Bagdi & documentary evidence brought on record it reveals that vide circular no. PD/ CIR/ 76/589/2345 dated 13-3-92, Public Sector Banks were advised to ensure that basic pay plus dearness allowance and special allowances for Armed Guards/Watchmen are taken into account while protecting the last drawn pay and dearness allowance thereon at the time of retirement/ discharge from the service of Armed Forces, as special allowance is in the nature of basic pay.

13. Some of the Banks did not reckon special allowance while fixing basic pay on re-employment. The Personnel Committee of the Indian Banks' Association after taking into consideration the practical difficulties that Banks encounter in making recovery thereof decided that clarification given vide circular dated 13-03-92 may be made applicable w.e.f. a prospective date and also waive the recoveries that may arise on account of such re-fixation of pay. The matter was taken up with the government with a request to allow waiver of recoveries that may arise on account such re-fixation of pay. The government conveyed their approval on the following lines:—

(i) Pay fixation of Armed Guards in terms of IBA letter dated 13-03-92 be made prospectively i.e. only in respect of Armed Guards who joined public sector banks on or after 13-03-92 and excess payment if any made to them be recovered.

(ii) The pay fixation of Armed Guards who joined the banks prior to 13-03-92 may also be re-fixed to re-opening the cases but recovery of excess payments, if any made to them may be waived.

(iii) Since there are possibilities of yet other posts in the public sector banks carrying special allowance to which ex-servicemen might have been appointed, this decision may also be applied to such posts.

14. Accordingly, the impugned circular no. 43/94 dated 12-12-94 was issued.

15. Perusal of the impugned personnel division circular, no. 43/94 dated 12-12-94 reveals that in respect of pay fixation of Ex-Servicemen re-employed in the service of the Bank directions were provided as per guidelines approved by the government. It was further provided therein that the cases of all ex-servicemen re-employed in the bank in the special allowance carrying posts as award staff be re-opened and their pay be re-fixed accordingly. It was also advised therein that in future while making re-fixation of pay of ex-servicemen who joined the bank to a post carrying special pay, the element of special pay be taken into account at the time of fixation of pay of ex-servicemen re-employed in the bank.

16. Admittedly, in pursuance of above guidelines the pay fixation of ex-servicemen re-employed by the bank was re-opened and was re-fixed in terms of the circular. Some of the ex-servicemen whose pay were so re-fixed in terms of the impugned circular of PDCL 43/94 filed writ petition before Hon'ble P&H High Court and Hon'ble Punjab & Haryana High Court vide its judgment dated 19-08-99 observed that since no opportunity was given to the petitioner therein the impugned action was voilative of principle of natural justice. Hon'ble Court further observed as under:—

> "We dispose of the writ petition with the direction that the impugned orders of reduction in pay are quashed. The consequential reliefs shall follow. It will, however, be open to the respondents to proceed afresh in accordance with the principles of natural justice."

17. Special Leave Appeal (Civil) No. 3186-3201/2000 filed against the decision supra was dismissed with following observations:—

> "Mr. Harish N. Salve learned Sr. Counsel for the petitioner cannot go behind the circular issued by the Central Govt. and, therefore, the opportunity would be futile, since the salary of the employee has been reduced. The fair play demands the opportunity and therefore, we do not interfere with the order passed by the High Court."

18. In identical matter Hon'ble Rajasthan High Court while allowing the petition in SB (Civil) Writ Petition No. 1722/95 vide its judgment dated 24-08-2000 held:—

> "In view of the above, the impugned order of recovery is quashed and set aside as the same is passed in clear violation of principle of natural justice with a direction to the respondent Bank to pass fresh order only after extending an opportunity of hearing to the petitioner."
>
> "If the order is adverse to the petitioner, then the petitioner will be at liberty to challenge the same before appropriate forum by way of appropriate proceedings."

19. In view of the aforesaid decisions vide circular HRDD:IR:5405 dated 14-01-04 (Ex-M7) following directions were given :—

"The case of ex-servicemen re-employed in the service of the bank in the award staff to a post carrying special pay (previously special allowance) prior to 12-12-94 (since the ex-servicemen re-employed in award staff on or from 12-12-94 must have been originally given fixation in terms of PDCL 43/94) be re-opened and restored to the position existing prior to PDCL 43/94 and thereafter re-fixed in terms of the guidelines circulated vide PDCL 43/94 and recoveries effected after giving an opportunity to the effected employee keeping in view the aforesaid decisions of Hon'ble P&H High Court and Hon'ble Supreme Court."

20. Upon perusal of the Annexure- I enclosed with the said circular it also reveals that in respect of those ex-servicemen re-employed in the bank whose petitions have been allowed by Hon'ble P&H High Court, Hon'ble Raj. High Court and Hon'ble H.P. High Court, directions have been given to Regional Manager concerned that they be served with the show-cause notice to afford them opportunity in compliance with the judgment dated 3-03-2000 of Hon'ble Supreme Court.

21. In present case the union has alleged that on the basis of impugned circular no. 43/94 dated 12-12-94 the management of the bank has re-fixed and reduced the pay of the Armed Guards (as per the list enclosed with the reference order) without affording any opportunity of hearing to them. The union has not adduced any oral or documentary evidence in support of its claim and ex-party proceedings were drawn against the union. But it is an admitted case of the management of the bank that the pay of the above Armed Guards have been reduced and re-fixed in pursuance of the impugned circular. Upon perusal of the above list it is evident that recoveries have been affected & pay of the above workmen has already been reduced after fixation in terms of the impugned circular no. 43/94. It is not the case of the non-applicant that above action was taken after affording opportunity of hearing to the workman. Even if, subsequently notices have been issued to the workmen in the terms of the guidelines circulated vide HRDD:IR: 5404 dated 14-1-04 (Ex-M7), the earlier action of the management regarding re-fixation & reduction of the pay of the workmen cannot to be said to be in consonance of the principle of natural justice. The allegations of the union that no notice or opportunity was given before reduction and re-fixation of the pay, has not been controverted.

22. In the above factual backdrop in view of the aforementioned decisions of the Hon'ble Punjab & Haryana High Court, Hon'ble Rajasthan High Court and Hon'ble Supreme Court, the action of the management in re-fixing/ reducing the pay of the workmen in present matter without affording any opportunity of hearing to them is not justified and legal.

23. In the result, it is held that the action of the management of the bank in re-fixing/reducing the pay of the Armed Guard (as per list enclosed with the reference order) on the basis of staff circular no. 43/94 dated 12-12-94 is not legal and justified. However, it is opened to the non-applicant bank to pass fresh order only after extending an opportunity of hearing to the above Armed Guard. The reference under adjudication is answered accordingly.

24. Award as above.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 22.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 60/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/22/2007-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S.O. 22.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2007) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 14-11-2012

[No. L-12012/22/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer : Sh. N. K. Purohit

Industrial Dispute No. 60 of 2007

Reference No. L-12012/22/2007-IR (B-II) Dated : 03-09-2007

Shri Pappulal
S /o. Shri Devilal Hajoori,
Bassi, Disst. Chittorgarh(Raj).

V/s

The Regional Manager,
Bank of Baroda,
PB No. 15, 3 B 1, Hazareshwar Mahadeo Colony,
Opp. Collector's Bungalow
Udaipur-313001.

Present :

For the applicant Union : Sh.Manish Mathur.

For the Non-applicant : Sh.Rupen Kala.

AWARD

22-10-2012

1.The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 and 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial disputes to this tribunal for adjudication :—

> "Whether the workman Shri Pappulal S/o Shri Devilal Hajoori was in employment between year 1987 to 21-8-2005 and worked more than 240 days in preceding one year in the Bank, If yes, whether the action of the management of Bank of Baroda in terminating the service of the workman w.e.f. 21-8-2005 is legal and justified? If not, to what relief the employee is entitled to and from which date?"

2. The workman in his claim statement has pleaded that he was in employment between years 1987 to 21-08-05 as daily wager in the branch of the non-applicant Bank at Bassi and thereafter he had worked continuously as Class-IV employee/Safai Karmchari on monthly wages up to 21-08-05. He has further pleaded that despite he had worked for more than 240 days in each calendar year, his services have been terminated on 21-08-05 without any notice and compensation in lieu of notice therefore, his termination was in violation of Sec. 25(F) of the I.D.Act. The workman has alleged that after terminating his services fresh hands were given recruitment without any offer of re-employment to him therefore; the non applicant has also violated the provisions of Sec. 25(H) of the I.D.Act. Thus, the workman has prayed for his reinstatement with back wages and all consequential benefits.

3. In reply to the claim statement while denying the claim of the workman it has been contended by the non applicant that the workman had not worked continuously during period 1987 to 30-09-95. He was engaged by the Branch Manager as daily wager for casual work as and when required. It has been averred that after 21-08-05, the workman himself did not turn up. Further, the work which he was performing was not required in the branch. He was engaged as daily wager on oral contract basis as per requirement of work therefore, there was no need to give any notice or notice pay to the workman. It has also been contended that the workman had never worked for 240 days in a year and his services were not terminated. Therefore, the provisions of Section 25 (F) and 25(H) are not attracted and the claim of the workman deserves to be rejected.

4. In rejoinder, the workman has reiterated his earlier averments made by him in his claim statement.

5. In evidence the workman has filed his affidavit whereas, the non applicant has filed counter affidavit of Sh. Anand Kumar Pancholi. In documentary evidence the workman has filed documents Ex-W1 to W 10.

6. Heard the learned representative on behalf of both the parties and perused the relevant record.

7. In view of the rival pleadings of both the sides following points crop up for consideration:—

I. Whether the workman was in employment between years 1987 to 21-08-05 and had worked for more than 240 days in preceding 12 months from the date of his termination 21-08-05 whose services were terminated in violation of Section 25 (F) of the 1.D.Act?

II. Whether fresh hands were given recruitments after terminating services of the workman without giving him opportunity of re-employment in violation of Section 25(H) of the I. D .Act?

III. What relief the workman is entitled to?

Point No.1

8. Learned representative for the workman has submitted that the workman has proved his case set forth in his claim statement by Submitting his affidavit and documents ExW-1 to ExW-10 and he has discharged his initial burden. The management has admitted in his reply that the workman was engaged as casual daily wager for casual work. The management has not produced any documents to show that the workman had not worked for 240 days. He has further submitted that the documents were in power and possession of the management and the same have not been produced therefore, adverse inference should be drawn against the management. He has also submitted that it is established from the documentary evidence produced by the workman in support of the claim that the workman was in employment between year 1987 to 21-08-05 and he had also worked for more than 240 days during preceding 12 months from the date of his termination therefore, the termination of the workman without any notice or notice pay and compensation was in violation of Section 2S(F) of the I.D.Act.

9. Per Contra, the learned representative for the management submitted that the burden to prove his case was on the workman. He has not adduced any documentary evidence to substantiate his statement. Mere affidavit in support of his case is not sufficient for proving his case. He further submitted that from certificate Ex-W9, it reveals that his actual total working days during period 1987 to 1995 were 508 days only. Documents Ex-W5 dated 16-04-01 also reveals that his total working days up to 16-04-01 were 1887 days. Thus, the workman has failed to prove that he had worked uninterruptedly during period 1987 to 21-8-05. He has also failed to establish that he had worked for at least 240 days during preceding 12 months from the date of his termination. Learned representative

further submitted that no appointment letter was ever given to the workman and he was being engaged as daily wager as and when required for casual work like cleaning and filling water and his services were not required continuously. Therefore, the provisions of Section 25-F of the I.D.Act. are not attracted in his matter. In support of his contention he has relied on (2005) 8 SCC 750, (2005) 5 SCC 100, (2002) 3 SCC 25, (2007) 1 LLJ 822 (1997) 4 SCC 391, (2012) 1 SCC 558, (2005) 8 SCC 450, (2004) 8 SCC 195, (2007) (3) RLW 1999, (2000) 4 RLL Raj. 297 and 2003 II LJ 791.

10. I have given my thoughtful consideration to the rival submissions of both the parties and have gone through the decision referred to by the learned representative on behalf of the management.

11. To attract the provision of Section 25-F of I.D.Act one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year.

12. The expression "continuous period" occur in Section 25-F has been defined in Section 25-B of the I.D.Act. Under sub-section (1) of the Section 25-B, if a workman has put in uninterrupted service of establishment including the service which may interrupted on account of sickness, authorize leave, accident, a strike which is not illegal, a lock out or secession of work that is not due to any fault on the part of the workman shall be said to be continuous service for one year i.e. 12 months in respect of number of days he has actually worked with interrupted service permissible under sub-section (1) of Section 25-B.

13. Sub-section 2 of Section 25-B of the I.D. Act says that even if a workman has not been in continuous service for a period of one year as envisaged under sub-section (1) of 25-B of I.D.Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said sub-section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year.

14. In the background of the legal provisions set forth above, factual scenario in the present case is to be examined.

15. The initial burden was on the workman to prove that he had remained under the employment of the non-applicant as a workman for a continuous period of at least one year as envisaged u/s 25-F of the I.D.Act therefore, his termination without notice or compensation in lieu of notice was in violation of the said section.

16. The workman in his affidavit has deposed that from 1987 to 30-09-95 he had worked as daily wager in the Branch of the bank at Bassi (Chittorgarh). Thereafter, he had worked continuously as Class IV employee and Safai Karmchari up to 21-8-05 but his services have been terminated without any notice or compensation in lieu of notice. In cross examination he has admitted that he was not given any appointment letter. In support of his affidavit he has filed document Ex-W1 to W10.

17. In rebuttal, the management witness Sh.Anand Kumar Pancholi has stated that the workman was engaged by the then Branch Manager at his level for casual work like filling water and cleaning work on daily wages and payment was used to be made from P and L Account through vouchers. The workman did not work continuously during period 1987 to 30-09-95. He has denied that workman had worked thereafter up to 21-08-05 on monthly wages. As regard documents Ex W1 to W3, W5, W7 and-W8 he has stated that these documents were pertaining to internal correspondence of the Bank. Even, if, the Bank Manager had recommended his case, the workman had not acquired any right to employment. As regard to documents Ex-W4 and W9 he has stated that it is not clear from the certificates who were Branch Manager at the time of issuing these certificates.

18. Upon perusal of Ex-W10 pertaining to details of working days and payments made to the workman 9-02-87 to 4-09-91 it reveals that the workman had worked during said period intermittently. Document Ex -W9 and W4 dated 6-09-91 and 18-10-95 respectively are copies of the certificates said to be issued by the Branch Manager, Bassi. From certificate Ex-W9, it reveals that the total actual working days of the workman during 1987 to 1-09-98 were 70 days only and certificate Ex-W4 reveals that his total actual working days from 1987 to 30-09-95 were 508 days only. Thus, it is evident from the certificate Ex-W4, W9 and W10 that the workman had not worked continuously during period 1987 to 1995. As per details given by the Branch Manager to the Regional Office vide Ex-W5 dated 16-04-01 also, total working days of the workman during period from 1987 to April, 2001 were 1887 days only.

19. Document Ex-W8 is a copy of a letter dated 12-02-93 of the Regional Manager addressed to Branch Manager, Bassi wherein it has been stated that full time work may be taken on pro-data basis from the part time safaiwala working in the Branch. Ex -W7 is another letter of Regional Manager dated 24-04-96 addressed to Branch Manager, Bassi regarding payment of wages equivalent to 1/3rd scale wages to the workman with effect from 1-04- 96 for enhanced sweeping area of 1522 sq.feet. Ex-W6 is copy of application of the workman dated 7.03.98 for payment of arrears of wages equivalent to 1/3rd scale for the period of 30-10-92 to 31-03-96 as per carpet area 1522 sq.feet. Ex-WI and Ex-W2 are copies of letter dated 7-03-98 and 27-6-98 of the Branch Manager addressed to the Regional Manager whereby representation of the workman were forwarded for arrears of wages as per 1/3rd scale wages for the period

30-10-92 to 31-03-96. Ex-W3 is copy of the letter of the Branch Manager to Asstt. General Manager dated 23-09-98 wherein request has been made to give direction regarding arrears of wages of the workman.

20. It is evident from the documents Ex-W1 to Ex-W 10 that these documents are pertaining to period from 1987 to September, 1998 only. The workman has failed to produce any documentary evidence for remaining period i.e. 23-09-98 to 21-08-05. Further, the documentary evidence adduced by him reveals that the workman had worked off and on Since 1987 to 1995. From documents Ex-W-1 to W-3 it further reveals that the workman had worked as part time daily wager worker for cleaning premises of the bank. But from above documents it cannot be inferred that he had rendered uninterrupted service during period 30-10-92 to 31-3-96 in view of the document Ex-W4 which shows that total working were 508 days only during period from 1987 to 1995. The workman has failed to establish that he has put in uninterrupted service with the non applicant for a continuous period not less than 1 year as envisaged under sub-clause 1 of the Section 25-B.

21. Thus, the scope of the enquiry is to be confined to only 12 months preceding the date of termination to decide whether the workman has completed at least 240 days during preceding 12 months from the date of his termination i.e. 21-08-05. In this regard except the affidavit of the workman in his favour there is no other corroborative evidence. Further, the workman did not call for documents from the non-applicant bank therefore, no adverse inference can be drawn against the non-applicant for not producing documents in respect of actual working days of the workman. Apart that, failure to prove defense by non-applicant does not discharge the burden of proof to establish that the workman had worked for at least 240 days during last 12 preceding months from the date of his termination.

22. In (2002) 3 SCC 25 Hon'ble Apex Court has observed as under:—

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone the award is liable to be set aside."

23. In decision rendered in (2005) see 100, Hon'ble Apex court has observed that the initial burden of proof is on the workman to show that he had completed 240 days of service. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact worked for 240 days in a year. Hon'ble court has further observed that failure to prove a defense does not amount to an admission and nor does it reverse or discharge the burden of proof.

24. In view of the legal proposition laid down in the decisions supra mere affidavit of the workman is not sufficient evidence to establish that the workman had worked at least for 240 days during preceding 12 months from the date of his termination as envisaged under clause 2 of sec. 25-B of the I.D. Act.

25. Since, the workman has failed to prove that he had been in continuous service for not less than 1 year as per definition of 'continuous service' u/s 25-B, provisions of Sec. 25-F are not attracted. Therefore, this point is decided against the workman.

Point No. II

26. The workman in his claim statement and affidavit has stated that after termination of his services other persons were given employment by the non applicant without affording any opportunity of re-employment to him. He has not disclosed the name of such persons. The workman has not produced any documentary evidence to substantiate his case in this regard. Mere his bald statement that other persons have been given employment in his place is not sufficient. Thus, the workman has also failed to establish that the non applicant has violated the provisions of Sec. 25-H of the I.D.Act.

Point No.III

27. In view of the conclusions drawn in respect of point No. I and II that the alleged action of the management was not in violation of the provisions of section 25-F and 25-H of the I.D.Act, the workman is not entitled to any relief.

28. In the result, it is held that the action of the management in terminating the services of the workman was not illegal and unjustified. Resultantly, the workman is not entitled to get any relief. The reference under adjudication is answered accordingly.

29. Award as above.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 23.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑल इण्डिया रेडियो के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 57/2003)

4760 GI/12-12

को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2012 को प्राप्त हुआ था ।

[सं. एल-42012/177/2002-आईआर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 23.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the management of All India Radio, and their workmen, received by the Central Government on 10-12-2012

[No. L-42012/177/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/57/2003

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Vinod Kumar Ghogharakar,
S/o Shri Khemchand Ghogharakar,
Samta Samaj
Panchsheel Nagar,
Bhopal (MP) ...Workman

Versus

Asstt. Engineer (Electrical),
Civil Construction Wing,
All India radio, 54,
Shyamla Road,
Bhopal ...Management

AWARD

Passed on this 16th day of November, 2012

The Government of India, Ministry of Labour vide its Notification No.L-42012/177/2002-IR(CM-II) dated 13-3-03 has referred the following dispute for adjudication by this tribunal :—

> "Whether the action of the management of Asstt. Engineer (Electrical) All India Radio Bhopal in terminating the services of Shri Vinod Kumar Ghogharakar S/o Khemchand Ghoghrakar w.e.f. 23-10-2001 is legal and justified? If not what relief the workman is entitled to"

2. The case of the workman, in short, is that Shri Vinod Kumar Ghogharakar was initially appointed as Khalasi on 1-9-93. He was paid salary from September 1993 to March 1997 by the office of Assistant Engineer, Electrical Construction Wing (E), All India Radio, Bhopal. Thereafter from 1-4-97 to 31-3-2001 the wages were paid through a private contractor though he worked continuously with the management. The contract was only a paper arrangement to show that the workman was an employee of the contractor. The workman was registered in the Employment Exchange office and the management vide letter dated 9-8-96 requested the Employment Officer Bhopal to sponsor the name of the candidate for the post of Khalasi which was lying vacant. The workman was terminated w.e.f. 23-10-2001 without any notice and without payment of compensation as required under Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is submitted that the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, inter alia, is that the alleged workman was given the work of Assistant Pump Operator for day to day operation and routine maintenance of water supply, pumping set under work order at AIR, Premises, Bhopal. Subsequently the work order was renewed time to time till 31-12-96 till date the alleged workman was assigned work on contract basis. From 1-4-97 the said work was given to the contractor namely M/s. Service India, Nehru Nagar, Bhopal on contract basis till 3-10-2000. Then the contract was given to M/s. Abhishek Electrical Works, Bhopal till 8-4-2002. It is stated that alleged workman was never an employee of the management and the Act, 1947 is not applicable. It is stated that he is presently employed and is serving as watchman/ peon With State Govt. of MP under Archaeology Archives and museums, Bhopal and posted at Orchha. It is submitted that he is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the action of the management in terminating the services of Shri Vinod Kumar Ghoghrakar w.e.f. 23-10-2001 is legal and justified?

II. To what relief the workman is entitled?

Issue No. I

According to the workman, he was appointed as Khalasi on 1-9-93 and worked continuously till March 97. Thereafter the wages was paid by the contractor till 31-3-2001 for name sake though he was employee of the management. On the other hand, the management contention is that he was under work order for operation and routine maintenance of water supply pump. The contract was renewed time to time till 31-12-96 . Thereafter the work was given to the contractors.

6. The important point for consideration is as to whether the alleged workman was the employee of the management or he worked on contract basis and subsequently worked under contractor. The workman adduced oral and documentary evidence in the case. The workman Shri Vinod Kumar Ghoghrakar is examined in the

case. He has supported his case in examination-in-chief that he worked from Sept. 1993 to March 1997 in Electrical construction wing (E) of AIR, Bhopal. Thereafter from 1-4-97 to 31-2-2001, his wages was paid through Private contractor. He has admitted in cross-examination that he was engaged on contract basis. This clearly shows that the provision of Section 2(oo)(bb) of the Act, 1947 is attracted. He has further admitted that the AIR had given contract to M/s. Abhishek Electrical and he was working under him. This shows that he has established the case of the management. He has also admitted in his evidence that he was working from 2003 as watchman with Archaeology Archives. This shows that he is gainfully engaged. His evidence shows that he was on contract basis and thereafter worked under contractor. It is clear that there was no relationship of employer and employee between the management and the alleged workman.

7. He has filed a letter dated 9-5-96 sent by superintending Engineer (Electrical), AIR addressed to the Employment Officer, Bhopal for sponsoring candidates. This is admitted by the management and is marked as Exhibit W/1. This shows that the management had necessity of Khalasi at one point of time. There is no other evidence to show that any-list of candidates was sent by the Employment Officer. The workman has filed original certificates to show that he was engaged till 31-3-2001 . These certificates are not proved. However these certificates clearly shows that he was engaged on contract basis which is the case of the management. This clearly shows that the provision of Section 2(oo)(bb) of the Act, 1947 is applicable and the management has not violated any provision of the Act, 1947.

8. On the other hand, the management has examined Shri Ompal Singh who is working as Assistant Engineer (Electrical) AIR, Bhopal. He has supported the case of the management that the alleged workman worked on contract basis. He has further corroborated that the said work was subsequently given to the contractors. His evidence shows that the alleged workman was not an employee of the management and the action of the management is justified. This issue is decided against the workman and in favour of the management.

9. **Issue No. II**

On the basis of the discussion made above, it is clear that the alleged workman was engaged on contract basis. Thereafter he worked under contractor. This is clear that he is not entitled to any relief. Accordingly the reference is answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 24.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 35/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2012 को प्राप्त हुआ था ।

[सं. एल-22012/537/1999-आईआर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 24.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 35/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of WCL and their workmen, which was received by the Central Government on 10-12-2012.

[No. L-22012/537/1999-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, JABALPUR

NO. CGIT/LC/R/35/2001

Presiding Officer Shri. Mohd. Shakir Hasan

Shri Surap,
S/o Ghodia Suryawanshi,
P.O. Kodarkhara,
Amla, Distt. Betul (MP) ...Workman

Versus

General Manager,
WCL,
PO Pathakhera,
Distt. Betul (MP) ...Management

AWARD

Passed on this 20th day of November, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/537/99-IR(C-II) dated 1-2-2001 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the management of M/s. Western Coalfields Ltd. P.O. Pathakhera, Distt. Betul in terminating the services of Shri Surap S/o Ghodia Suryavanshi is legal and justified? If not, to what relief the workman is entitled?"

2. The case of the workman, in short is that he was appointed as a General Mazdoor in the year 1979 in WCL.

While he was on duty he met with an accident in the year 1983 and the fingers of the left leg were amputated. He was declared unfit and was stopped from work. He was terminated without giving notice and without retrenchment compensation under the provision of Section 25-F of the Industrial Dispute Act, 1947(in short the Act, 1947). The provision of Section 25-G and H of the Act, 1947 is also violated. It is submitted that the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, inter alia, is that, the workman was initially appointed as Badli time rated general mazdoor w.e.f. 11-1-1980 at Satpura II Mines. He met with an accident on 1-1-1983 while working in 2nd shift. He was immediately treated. He was discharged on 3-2-1983 on, his own request. He refused to take treatment as advised by the doctor for amputation of lower limb. The whereabout was not known to the management from 1983 to 1985. The management issued a letter dated 5-2-1985 advising him to appear before the Medical Board for his Medical Examination with regard to fitness for further services. He appeared and was examined by the Medical Board. He was assessed as Permanent partial Disablement (PPD) to the extent of 30 % and was declared unfit for working as General Mazdoor vide Boards recommendation dated 4-4-1985. The workman filed an application dated 21-6-1985 requested the management for lighter duty/alternative job on the surface. The management again referred for re-examination to Area Medical Board. The Area Medical Board had referred his earlier report that he was unfit for the job of General Mazdoor vide letter dated 18-7-1985. In the light of the medical report, the management terminated the workman from services w.e.f. 17-9-88 as he was declared unfit for the job of General Mazdoor. The workman was paid Rs. 28,700.48 towards workman compensation as per PPD assessment of 30 % vide cheque dated 16-12-97. It is submitted that the termination dated 17-9-88 on medical ground by the management is legal and justified.

4. On the basis of the pleadings of the parties the following issues are settled for adjudication—

I. Whether the action of the management in terminating the services of Shri Surap is legal and justified?

II. To what relief he is entitled?

5. **Issue No. I**

The workman did not examined himself in the case nor any other witness nor any document was adduced to support his case.

6. On the other hand, the management examined oral and documentary evidence. It is an admitted fact that the workman met with an accident while he was working in the mine. It is an admitted fact that his fingers of the left leg was amputated. It is also an admitted fact that he was declared unfit by the Medical Board. It is also an admitted fact that the workman had not decided to leave his employment in the mine on his own accord rather he applied for alternative job and lighter job on the surface in the mine.

7. Now the important question is that as to whether under the above circumstances the termination of the workman is legal and justified? The management witness Shri I. Sudhakar Reddy is working as Colliery Manager at Satpura II mine. He has supported the case of the management. He has supported the fact that the workman met with an accident and he was treated and he was found medically unfit by the Medical Board. He has also supported that the workman gave application for lighter job/alternative job but again the Medical Board had declared him unfit. He was accordingly terminated from service w.e.f. 17-9-1988. He has stated that the workman was paid compensation of Rs.28,700.48 as per the PPD assessment vide cheque dated 6-12-1997. His evidence clearly shows that he was terminated on the ground of report of Medical Board that he was unfit for work as General Mazdoor and he was paid compensation of his accident.

8. The management has also adduced documentary evidence. Exhibit M-1 is application of the workman for light job on the surface. This is filed to show that he had also opted for alternative job. Exhibit M-2 is the letter dated 10-7-85 of the Superintendent of Mines to the Medical Superintendent for re-examination to the workman. Exhibit M-3 is another application dated 28-5-85 of the workman for taking him on work but he was not allowed. Exhibit M-4 is another application dated 4-6-85 of the workman for taking him on duty. Thus the documentary evidence also shows that the workman applied for alternative job as he was unfit to work as General Mazdoor.

9. The learned counsel for the management argued that Rule 19-M of the Mines Rule 1955 provides that the unfit man should not be employed or continue to be employed in mines or in the category of mines. As such his termination by the management is justified. There is no evidence in rebuttal. There is no reason to discard the evidence of the management that the workman was declared unfit even for re-employment in any category of mine. This shows that the action of the management is justified. This issue is decided against the workman and in favour of the management.

10. **Issue No. II**

On the basis of the discussion made above, it is clear that the workman was also compensated and he was declared unfit for employment as General Mazdoor. This shows that the workman is not entitled to any relief. The reference is accordingly answered.

11. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 25.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 21/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2012 को प्राप्त हुआ था ।

[सं. एल-22012/11/1991-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 25.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 10-12-2012.

[No. L-22012/11/1991-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/21/2005 Date : 26-11-2012

Party No. 1 :

The General Manager,
Western Coalfields Limited, Ballarpur Area,
District Chandrapur (MS).

The Sub Area Manager,
Ballarpur Sub Area of WCL,
District : Chandrapur (MS)

Versus

Party No. 2 :

The General Secretary,
Wardha Valley Collieries Workers Union,
UCO Bank, Branch Ballarpur,
District : Chandrapur (MS)

AWARD

(Dated : 26th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their union "Wardha Valley Collieries Workers Union", for adjudication, as per letter No.L-22012/11/91-IR (C-II) dated 30-03-2005, with the following schedule:—

> "Whether the demand of Wardha Valley Colliery Workers Union for reinstatement in services of WCL in respect of 121 Wagon Loaders (List enclosed) who have worked between 1969 to 1979 on Wagon Loading Operations, is legal and justified? If so, to what relief they are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Wardha Valley Collieries Workers Union", ("the union" in short), filed the statement of claim and the management of WCL ("Party No. 1" in short) filed its written statement.

The case of the 121 claiments (as per list enclosed) as presented by the union in the statement of claim is that it (the union) is a registered trade union under the Trade Unions Act, 1926 and all the Coal Mines in the entire country were taken over by the Government of India by virtue of the Coal Mines Act, 1973 w.e.f. 31-01-1973 and the said mines were nationalized as per the provisions of Coal Mines (Nationalisation) Act, 1973 and party no. 1 is a subsidiary of Coal India Limited and for the purpose of proper functioning, the coal mines under the control of party no. 1 were divided into areas and sub-areas and Wardha Valley was a part of Chandrapur and Yavatmal districts and in the year 1983, the control of mines was distributed in Wani, Ballarpur, Chandrapur Areas and sub-areas and the present dispute relates to Wagon loaders, who worked in Wardha Valley during 1976-79 and were engaged at Ballarpur and Sasti collieries and it raised dispute consequent upon the discontinuation of casual loaders and several meetings were held between the parties, as a result of which, party no.1 agreed to prepare a seniority list of all wagon loaders, who had worked at Ballarpur and Sasti Collieries during the period from 01-01-1976 to 31-12-1979 and it was also agreed that whenever any vacancy would be available, preference would be given to the employees from the seniority list and the origirial minutes of the meeting dated 30-03-1980 are in possession of party no. 1 and party no. 1 recruited about 144 workers by displaying the notice on 03-05-1980 and on 29-03-1982, 13 workers were further recruited and till 1982, about 157 workers from the list were re-employed and in 1989, the party no. 1 invited list of candidates from employment exchange for filling the vacancies and interviews were held in March, 1990 and in view of the same, dispute was raised by it on 26-03-1990 before the party no. 1 and it was demanded that all left-out workers are entitled to be re-employed, but such demand was not considered, therefore, the dispute was raised before the conciliation officer, but as the dispute was not referred to the appropriate forum by the Central Government, writ petition no. 1153/92 was

filed before the Hon'ble High Court, Nagpur bench and the writ petition was allowed and consequent upon the order of the Hon'ble High Court, the dispute was referred to the Tribunal for adjudication.

The further case of the union is that all the 121 claimants were employed with party no. 1 and as per the minutes of the meeting dated 30-03-1980, they were entitled to be re-employed as and when vacancies were available and though vacancies were available, the party no. 1 did not re-employ them, in breach of the agreement dated 30-03-1980 and even otherwise also, as per the provisions of section 25- H of the Act, the said 121claiments are entitled to be reinstated in service from the date on which outsiders were appointed and they are also entitled to back wages from the said date and as per the standing orders, it was obligatory upon the party no. 1 to prepare a waiting list of all terminated employees and to re-employ them whenever vacancies were/are available, but party no. 1 did not follow the requisite procedure and in breach of the established procedure, in 1989, list of candidates was invited from the employment exchange and candidates were recruited by party no. 1 and party no. 1 also employed illegally certain contractors for doing the work, which the 121 claiments were doing, only to deny their legitimate claim.

The union has prayed to direct the party no. 1 to re-employ the 121 claiments with retrospective effect and to pay them back wages and all consequential relief.

3. In their written statement, the party no. 1 have pleaded inter alia that the union has not come up with clean hands and the union initially raised an industrial dispute in respect of 64 persons, before the Asstt. Labour Commissioner and the conciliation officer submitted failure report to the Central Government, but the Central Government refused to make the reference and being aggrieved by the said order, the union filed writ petition no.1153/92, before the Hon'ble High Court, Nagpur Bench and in the said writ petition at para 6, the union had pleaded that,"Petitioners after coming to know about the illegal recruitment, raised the dispute with respondent no. 2 on 26-03-1990 and submitted a list of 64 workers who worked during the period 1976-79 and were entitled to be provided with work. It is further stated that they should be given appointment in preference to other while making recruitment as agreed. A copy of the representation dated 26-03-1990 is enclosed to the petition and marked as Annexure- IV" and the Hon'ble High Court, vide order dated 13-12-2004, disposed of the writ petition by holding that :

> "Needless to state that issue of delay as also issue of locus of the petitioner to espouse the cause of 64 workmen is left open for adjudication by Central Government Industrial Tribunal."

and the Central Government, while referring the dispute in compliance of the orders of the Hon'ble High Court as aforesaid has made the schedule in respect of 121 wagon loaders and the order of reference is therefore virtually incorrect and the union neither before the management nor before the conciliation officer nor before the Hon'ble High Court made the claim in respect of 121 wagon loaders and the claim before the aforesaid forums was only in respect of 64 persons, list of which is at page no. 18 of Annexure-IV to the petition no. 1153/92 and in the light of the directions of the Hon'ble High Court, the issue of delay as well as the locus of the petitioner to espouse the cause of 64 workmen to be adjudicated and therefore, they filed an application dated 05-01-2007 for supply of better particulars and production of the documents, (i) Constitution of the union, (ii) Registration of the union with the Registrar of Trade union, (iii) Membership register from 1969 to 1979, (iv) the entire resolution passed during the aforesaid period by the union, (v) Membership subscription registers, (vi) Annual return and (vii) the particulars of the subscription received from the claimants, but the union in their reply dated 09-03-2007 stated of having no need to produce those documents and therefore, adverse inference is liable to be drawn against the union.

The further case of party no. 1 is that they had also filed another application raising preliminary objection as to maintainability of the order of reference, on 05-01-2007 and pending the said application, they also made representation dated 16-08-2007 to the Ministry of Labour for issue of corrigendum by way of amendment of the terms of reference, as the real dispute was only in respect of 64 persons, whereas the order of reference was made for 121 persons and as the appropriate Government failed to decide the representation, they filed Writ Petition No. 3159/08, before the Hon'ble High Court and the Hon'ble High Court observed that the objection filed by the management is to be decided by the Tribunal and hence, the petition was withdrawn by them.

It is further pleaded by the party no.1 that according to the union, the claimants were engaged for the work of wagon loading during the period from 1976-1979 and the dispute was raised for the first time in 1992 and there was inordinate delay in raising the dispute and the order of reference is vague as the identification of the claimants are not given in the order of reference and only the name of the claimants are not enough for their identification and assuming for the sake of argument, but not admitting, if the claim of the union is allowed by the Tribunal, then in absence of proper identification of the beneficiaries, such award cannot be enforced and as per the Mines Rules, 1955, the management is bound to maintained the statutory register, Form 'B' for the employees employed in the mines and the detailed particulars of each employee are to be mentioned in the said register and therefore, the claimants are bound to disclose their identification particulars and on perusal of the list of 121 persons

enclosed with the order of reference dated 30-03-2005, it can be seen that the name of 29 persons, whose names were appearing in the original list of 64 persons are not there and for the said reason also, the order of reference is bad in law and the order of reference being not in conformity with the judgment dated 13-12-2004, passed in writ petition no. 1153/03 by the Hon'ble High Court is illegal and is therefore liable to be rejected and the union has no locus standi to raise the dispute in respect of those, who are not their members and the claimants cannot be said to be members of the union and the union did not born during the period, the claimants alleged to have worked with the management and the relationship of employer and employees between them and the claimants does not exist and as such, there cannot be any industrial dispute between them and the claimants and the claimants have not disclosed anything in regard to their employment with the management, which is the basic and primary requirement to raise an industrial dispute and they have also not produced any documentary proof in support of their claim of employment in WCL and there are Statutory Rules and Regulations for appointment in WCL and in accordance with the directions of the Central Government, the employment in the lower cadre is made only by calling for list of required number of eligible candidates from Employment Exchange and in the year, 1990, management of WCL had invited applications through Employment Exchange for recruitment of certain workers and the union served the letter dated 26-03-1990, enclosing the list of 64 persons contending that they had worked with the management during 1976 to 1979 and hence, they should be given preference in the matter of employment and as they did not accept the demand of the union, the industrial dispute was raised before the ALC (C), Chandrapur on 10-09-1990.

The further case of the party no. 1 is that in 1976, there was a provision of having casual wagon loaders in the pool of the collieries and this was for the simple reason that placing of the wagon was not under the control of the management and it was the railways, who used to place/ supply wagons as per their convenience and under such circumstances, it was not advisable for them to have permanent wagon loaders on roll, as deployment of wagon loader varied from day to day depending upon the number of wagon supplied and after 1979, the loading of coal was being done through mechanical process and no man power was required for the same and whoever had been engaged in the process of wagon loading during the relevant period were regularized subject to working for more than 240 days and preference was given to them, whose names were sponsored through the employment exchange and to those who were in a position to prove that they worked as casual employees and the claimants had never worked with them as casual worker and that was the reason, none of them came forward during the period, the others were given employment and as the claimants were not the members of the union, so the union also did not espouse their cause during the said period and the dispute was raised after a lapse of 11 years, from which it is clear that the claimants did not work as casual workers and they were never engaged as wagon loaders at Ballarpur and Sasti collieries and there are five Central Trade unions, namely, INUC, HMS,BMS, CITU and AITUC, which are the recognized trade unions by the management and the union has demanded for production of documents of the year 1976-79, after a laps of 28 years and there is no law to keep record for such a long period of 28 years and the claimants are not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence.

Shri Shivpal Singh, the General Secretary of the union and Shri Virnarayan Singh, one of the 121 claiments have been examined as the two witnesses on behalf of the union.

Shri Vasant Janardhan Joshi, a senior Loading Superintendent of Ballarpur sub-area of WCL, Shri Kapildeo Prasad, the sub-area Manager of Ballarpur sub-area and Shri Pramod Jagirdar, a retired Chief General Manger (IR) of WCL have been examined as the three witnessed by the party no. 1.

5. The witness no.1 for the union, Shri Shivpal Singh in his examination-in-chief has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, this witness has stated that the union is entitled to raise the dispute of its member only and the union was recognized by the management from 19-12-1977 and the dispute was raised before the ALC in 1990, in respect of 121 workers and the union has not filed any document showing actual working days of each workman and the list i.e. names mentioned in paragraph 21 of the written statement are not available in the list of 64 persons filed before the Hon'ble High Court. This witness has further stated that the seniority list was prepared and given to the union by Shri B.B. Mishra, Personnel Manager in the year 1989 containing names of about 170 workers. Contradicting such statement, he has again stated that the seniority list of 170 persons was shown to him and copy of the same was not given to him and he did not demand copy of the same and out of the 170 workers, he had marked 121 workers as members of his union and the list given to him was not signed either by Shri B.B. Mishra or any other officer and he has not seen the muster roll as mentioned in paragraph 4 of his affidavit.

6. Shri Virnarayan Singh, the other witness examined by the union has stated that he was orally appointed as a wagon loader in Ballarpur sub-area of WCL on 01-01-1976 and worked as such till 31-12-1976, the date of his oral

termination from service and before terminating his services, party no. I neither issued any notice nor paid him compensation and party no.I also discontinued the services of other wagon loaders appointed along with him in similar manner and though management held discussion with the union and promised to take back the 121 wagon loaders, did not keep their promise, leading to the present dispute.

In his cross-examination, demolishing his own evidence given in his examination-in-chief, this witness has stated that he was appointed by a written order of one Lal Das, but he cannot say what was the position of Lal Das in the colliery and he does not remember the exact date and month of his appointment, but he was appointed in the year 1976 and he worked upto the year 1980-81 and he was not engaged daily to load the wagons and at times, he was not engaged for loading wagons and he cannot say the total number of days of his engagement in each month and there was an agreement with the management for re-appointment of himself and other labourers disengaged by the management.

7. The witness no. l, Shri Vasant for the party no. 1 in his evidence has stated that he entered into the service of WCL Ballarpur area in the year 1972 and since then, he has been working in loading section and the 121 claimens had not been deployed as wagon loaders during the period from 1976 to 1979. Though this witness has been cross-examined at length, his assertion that the 121 claiments were not deployed as wagon loaders during the period from 1976 to 1979 has not at all be challenged in the cross-examination.

8. Shri Kapildeo Prasad, the witness no. 2 in his examination-in-chief, which is on affidavit has reiterated the facts mentioned in the written statement. However, in his cross-examination, this witness has stated that he joined WCL in 1981as a management trainee for the post of under manager and he has no personal knowledge about the functioning of Ballarpur colliery of WCL, prior to his joining in service.

9. Shri Pramod Jagirdar, the witness no.3 for the management has stated that he was posted at Ballarpur Area as Personnel Officer during the period from 1976 to 1979 and during the period 1976, there was a provision for having casual wagon loaders in the pool of collieries and after 1979, the loading of coal in wagons was being done through mechanical process and no manpower was required for the same and there was no manual wagon loading since 1979 and non of the claimants had worked with the management as casual wagon loader during the relevant period and that is the reason for which they did not approach the management at the relevant period, when others were given employment and the union also did not espouse the cause of the claimants as they were not members at the said union. In his cross-examination, this witness has stated that he has no knowledge about the joint meeting between the management and the union on 30-03-1980 and there is no management's recognized union in WCL.

10. At the time of argument, it was submitted by the learned advocate for the party no. 1 that the union initially raised an industrial dispute in respect of 64 persons before the ALC and the conciliation officer submitted the failure report to the Central Government and the Central Government refused to refer the dispute to the Tribunal for adjudication, on the ground of inordinate delay and want of proof in support of their claim and the union approached the Hon'ble High Court in writ petition no. 1153/92 for redress and in the writ petition also, the union had mentioned about raising of the dispute in respect of 64 persons and the Hon'ble High Court while disposing the writ petition have been pleased to mention that the issue of delay as also issue of locus of the petitioner to espouse the cause of 64 workmen is left open for adjudication by Central Government Industrial Tribunal and therefore, the order of reference in respect of 121 claimants is virtually in correct and bad in law and names of 29 persons included in the original list of 64 persons furnished by the union are not included in the list of 121 claimants and for that reason also, the reference is bad in law and the order of reference dated 03-03-2005 made by the Government of India being not in conformity with the judgment dated 13-12-2004 passed in writ petition no. 1153/92 by the Hon'ble High Court is illegal and is liable to be rejected.

It was further contended by the learned advocate for the party no. 1 that the union has no locus standi to raise the dispute in respect of those who are not their members and as per the constitution of the union, persons working in coal industry can only become their members and as the management specifically denied having employed the 121 claimants, they cannot be said to be the members of the union and the union did not born, during the period, the claimants alleged to have worked with the management and for that also, the reference made at the instance of the union is not maintainable and on 05-01-2007, management had filed an application for supply of better particulars and production of documents in regard to the union and in support of the claim that the 121 claimants were members of the union, but the union in their reply dated 09-03-2007 refused to supply the same stating that there is no need to produce those documents and therefore, adverse inference is to be drawn against the union.

It was also contented by the learned, advocate for the party no. 1 that according to the union, the claimants were engaged for the work of wagon loading during the period from 1976-1979, but the dispute was raised for the first time in the year 1992, after a lapse of 11 years and

thus, there is inordinate delay in raising the dispute, the reference is not maintainable.

The learned advocate for the party no. 1 further submitted that the union has claimed that the 121 claimants had worked as wagon loaders for the period from 1976 to 1979, but the union has not disclosed anything with regard to their employment with the management and no document has been produced in support of such claim and the evidence of the only claimant examined by the union is support of such claim is so inconsistent, shaky and untrustworthy that no reliance can be placed on the same, whereas, the assertion of the three witnesses examined by the management that the 121claimants were not engaged by the management as wagon loaders during the period from 1976 to 1979 has not at all been challenged in the cross-examination and as the union has failed to prove that the 121 claimants had ever worked as wagon loaders with the management of WCL, the reference is to be answered in favour of the management and against the union.

In support of the contentions, the learned advocate for the management placed reliance on the decisions reported in 2011 LAB IC-4322 (State of UP V s. Hind Mazdoor Sabha), (2005) 8 SCC-750 (Surendranagar District Panchayat Vs. Dayabhai Amar Singh), 2007-I-LLJ-236 (State of Rajasthan Vs. Sarjeet Singh), (2007) 2 SCC-513 (Lal Mahammad and others Vs. Indian Railways Construction Co. Ltd.), (2008) 2 SCC-716 (MPSRTC Vs. S.C. Pandey), 1999 LLR-439 (State of UP Vs. Labour Court, Haldwani and others), 1998 (II) LLJ-627 (Municipal Corporation, Bilaspur and Another Vs. Veer Singh Rajput), 2011-I-LLJ-321 (SC) (General Manager Vs. Bharat Lal & another), 2002-I-LLJ-457 (Assistant Executive Engineer, Karnataka Vs. Shivlinga), (2001) 1 SCC-424 (Indian Iron & Steel Co. Ltd. Vs. Prahallad Singh), 2001-I-LLJ-561 (The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others), 1996 LAB IC-45 (Balwant Singh Vs. Labour Court, Bhatinda) and 1993 LAB-IC-806 (R. Ganeshan Vs. Union of India).

11. Per contra, it was submitted by the learned advocate for the union that the union is a registered union under the Trade Unions Act, 1926 and the applicants worked in Wardha Valley during the period from 1976 to 1979 at Ballarpur Colliery and Sasti Colliery in Ballarpur area and the union filed writ petition no. 1153/92 praying for reference and in view of the direction of the Hon'ble High Court, in writ petition no. 1153/92 , the reference was made and in view of the minutes of the meeting dated 30-03-1980, a letter was issued by the General Manager directing to prepare a seniority list of all casual wagon loaders employed for the period from 01-01-1976 to 31-12-1979 and as the management did not provide employment to the claimants inspite of the repeated request of the union in writing including the letter dated 10-10-1990, the present dispute was raised and on 17-11-1990, the management agreed about employment of casual wagon loaders and preparation of list of the casual wagon loaders, but management took the stand that there was no stipulation to enforce the said list and the stands taken by the management were contrary to the minutes of failure report recorded by the conciliation officer and all these documents are on record.

It was further submitted by the learned advocate for the union that in the judgment reported in 2000 (1) SCC-371, the" Hon'ble Apex. Court have held that the Tribunal cannot examine the validity of reference and therefore, the Tribunal cannot go beyond the reference.

The further contentions raised by the learned advocate for the union is that the evidence of the witnesses on affidavit filed by the management is without any substance and the union has fully proved the existence of an agreement and the validity of the reference made to this Tribunal and as per the provisions of section 25- H of the Act, all the terminated employees stand on the same footing and are entitled to be re-employed whenever vacancies occur and union can claim relief in respect of non workman/member also as per the judgment reported in 2000 (1) CLR-707 and there is absolutely no delay on the part of the union to raise the dispute and the management is in possession of the list of wagon loaders, who were continued or discontinued, but failed to produce the said list and calling for list from the employment exchange for recruitment and making recruitment by the management was totally violative of the minutes of understanding dated 30-03-1980 and therefore the contentions of the management regarding giving preference to the employees, who had completed 240 days of work over other workers, whose names were sponsored by the Employment Exchange and that the claimants were not sponsored by the Employment Exchange and that they did not work for 240 days are devoid of merits and for non-production of documents, adverse inference is to be drawn against the management and the reference is to be answered in favour of the union.

In support of the contentions, the learned advocate for the union placed reliance on the decisions reported in 2001 (1) SCC-371 (National Engineering Industries Ltd. Vs. State of Rajasthan), 2000 I CLR-707 (Mukund Ltd. Vs. Mukund Staff and Officers Association & others), 1996-II LLJ -820 (Central Bank of India Vs. S. Satyam & others) and 20087 (I) CLR-227 (Bhogpur Co-operative Sugar Mills Vs. Harmesh Kumar.

13. Keeping in view the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocates for the parties, now the present case in hand is to be considered.

14. The first objection raised by the learned advocate for the party no. 1 is in regard to the locus standi of the union to raise the dispute on behalf of the applicants.

Admittedly, the union did not produce any document in support of its claim that the claimants were its members, inspite of the demand made by the party no. 1. However, it is found from the materials on record that the party no.1 had held a meeting with the union on 30-03-1980 in regard to absorption of casual wagon loaders in underground job and other matters without raising any objection about the authority of the union for raising such dispute. It is also found from record that the union also raised industrial dispute on behalf of the 121 applicants before the Assistant Labour Commissioner (Central), Chandrapur and during the course of the conciliation, the party no.1 did not raise any objection regarding the locus standi of the union to raise the dispute.

A-part from the said facts, it is to be noted that section 36 of the Act deals with representation of parties and sub-section (1) of section 36 says that a workman who is party to dispute shall be entitled to be represented in any proceeding under this Act by—

(a) Any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) Any member of the executive or other bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) Where the worker is not a member of any trade union, by any member of the executive or other office bearer of a trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

It is clear from sub-section 1 (C) of section 36 of the Act that when a workman is not a member of any trade union, then he can be represented by any member of the executive or other office bearer of any trade union connected with the industry in which the worker is employed.

In view of the facts mentioned above, it is held that the union has the locus standi to espouse the cause of the 121 claimants.

15. The next contention raised by the learned advocate for the party No. 1 is that the union initially raised an industrial dispute in respect of 64 persons, before the ALC and in the writ petition also, the union submitted the list of 64 claimants and in view of the direction of the Hon'ble High Court in writ petition no. 1153/92, the Central Government referred the dispute to the Tribunal in respect of 121 claimants and in the list of 121 claimants furnished with the reference, name of 29 workers, whose name were furnished in the initial list of 64 claimants are not there and as the order of reference made by the Central Government is not in accordance with the direction of the Hon'ble Court, the reference is virtually incorrect and bad in law and therefore is not maintainable.

However, on perusal of the documents regarding the dispute raised before the ALC and the writ petition no. 1153/92 including the orders passed by the Hon'ble court in the said writ petition, it is found that there is no force in the aforesaid contention raised by the learned advocate for the party no.1. There is no doubt that the union initially asked the party no. 1 for giving employment to 64 workers by their letter dated 26-03-1990, but in the said letter, it had been clearly mentioned that the list of 64 workers submitted by them was the first list and they would submit further list of the workers after verification of their names and addresses etc. It is also found from the materials on record that the union raised the industrial dispute before the ALC (C), Chandrapur on behalf of the 121 claimants, as per the list furnished with the reference and not in respect of 64 workers as claimed by party no. 1. It is found that the report of the ALC (C), Chandrapur and the refusal order of the Central Government to refer the dispute to the Tribunal for adjudication that the union had raised the dispute in respect of the 121 claimants. In the writ petition no. 1153/92, in paragraph no. 1 also, it has been categorically mentioned by the union that, "A list of workers on whose behalf the present petition is being filed is annexure-I." "Annexure-I" attached to the said writ petition shows the list of the 121 claimants, in respect of which, the reference has been made by the Central Government. Therefore, the contention raised by the learned advocate for the party no. 1 on that score fails.

16. The third contention raised by the learned advocate for the management is regarding inordinate delay in raising the dispute by the union.

According to the union, in view of the minutes of the meeting dated 30-03-1980, party no. 1 gave employment to 144 workers by displaying notice on 3-5-80 and to 13 workers on 29-03-1982 and in 1989, the party no. 1 invited list of candidates from employment exchange for filing the vacancies and conducted interviewed in March, 1990, so the dispute was raised by it on 26-03-1990. Per contra, the case of party no. 1 is that the 121 claimants alleged to have been worked as wagon loaders for the period from 1976-1979, but the dispute was raised in 1990, so there was inordinate delay in raising the dispute for about 11 years and such delay has not been explained, so the reference is not maintainable.

On perusal of the materials on record and taking into consideration the pleadings of the parties, it is found that there is no delay in raising the dispute. It is the admitted case of the parties that manual loading of wagon was

stopped after 1979. It is also not disputed that the party no. 1 employed 157 wagon loaders till 1982. It is never the case of the party no. 1 that after 29-03-1982 till March, 1990, any action was taken by them to recruit workers to work in Ballarpur or Sasti Colliery. Soon after action was taken by party no.1 to recruit workers after asking for list of candidates from the employment exchange, the union raised the dispute. So, it is found that there is no delay in raising the dispute by the union.

17. The claim of the union is that the 121 claimants worked as wagon loaders for the period from 1976 - 1979. Party no. 1 has denied the same. So, the initial burden is on the union to prove that infact the 121 claimants worked as wagon loaders with party no. 1. It is to be mentioned here that in the statement of claim, the union, except mentioning a bald statement that all the 121 claimants were employed with party no.1 at Ballarpur and Sasti Colliery has not given any other particulars about their such employment. The detailed particulars of the claimants have also not been furnished for their proper identification.

The union has not filed a single document or even a scrap of paper to show that the 121 claimants had ever worked as wagon loaders with party no. 1. As already mentioned earlier, the oral evidence adduced by the union is so inconsistent, shaky and untrustworthy that no reliance can be placed on the same.

According to the union, after discontinuation of the casual loaders, it raised agitations, so several meetings were held and as per the minutes of the meeting dated 30-03-1980, party no. 1 agreed to prepare a seniority list of all wagon loaders, who had worked at Ballarpur and Sasti Collieries during the period from 01-01-1976 to 31-12-1979 and whenever vacancy would be available, preference would be given to the employees from the seniority list. However, there is no pleading at all by the union that in accordance with the minutes of the meeting dated 30-03-1980, any seniority list was prepared and if such a list was prepared, then whether the name of the 121 claimants were included in the said list or not.

Moreover, on perusal of the minutes of the meeting dated 30-03-1980, it is found that the contention as raised by the union in this regard not to be true. There is nothing in the minutes of the meeting dated 30-03-1980 regarding preparation of the seniority list of wagon loaders and regarding giving preference to them in employment in case of vacancy. In the said minutes it has been mentioned that,

"The issue of absorbing casual wagon loaders in underground job was discussed in detail. The settlement arrived at earliest between the management of Wardha Valley Area and the Wardha Valley Colliery workers' union and the management and the INTUC union was discussed in detailed. Unless the above settlements are revised, the management is helpless to do anything in this regard. The union suggests that they would raise a dispute before the Assistant Labour Commissioner (Central) and other unions will also be involved and a workable formula would be evolved before the ALC (C), so that all parties would become parties in the settlement, as above."

From the copy of the letter dated 30-03-1980, written by the General Manager, Wardha valley area to the Sub-area Manager, Sub-area-IV, it is found that direction was given by the General Manager to the sub-area Manager to maintain a seniority list of all casual wagon loaders who had worked at Ballarpur and Sasti Colliery from 01-01-1976 to 31-12-1979 and whenever casual loading job would be available then to give them preference on the basis of their seniority. In the said letters also, there is nothing to provide employment to the casual wagon loaders in any other job.

So, it is clear from the contents of the above mentioned two documents that the basis on which, the union has raised the claim for the 121 claimants is not true.

18. The witness no.1 for the union, who is said to be the General Secretary of the union, in his cross-examination has stated that a list of 170 workers were prepared by the party no. 1 and he had seen the same. At one place of his cross-examination, this witness has admitted to have received a copy of the said list, though subsequently demolishing his own statement, he has stated that the list was shown to him. Likewise, the claimant, Virunarayan Singh who has been examined as the witness no.2 on behalf of the union, in his cross-examination has stated that he was appointed by a written order of Lal Das. However, even none of the above said documents has been produced by the union to show that the 121 claimants worked as wagon loaders with party no.1 for the period from 1976 - 1979. When the union has failed to prove that the claimants had ever worked as wagon loaders with the party no.1, the question of application of section 25-H of the Act does not arise.

In view of the materials on record and the discussions made above, it is held that the demand of the union is illegal and unjustified. Hence, it is ordered:-

ORDER

The demand of Wardha Valley Colliery Workers Union for reinstatement in services of WCL in respect of 121 Wagon Loaders (List enclosed) is illegal & unjustified. The 121 claimants are not entitled to any relief.

J. P. CHAND, Presiding Officer

बल्लापुर कोलरी पिन नं 3/4 के भूतपूर्व वैगन लोडरों की सूची जिन्होंने 1976 से 1979 तक के समय में वैगन लोडिंग का काम किया है ।

1. श्री दुर्गा दुक्खी
2. श्री हीमकिशोर रामदयाल
3. श्री बद्री वासुदेव
4. श्री दादूराम गुठ्ठल
5. श्री रघुनंदन सेमरा
6. श्री राम राखन श्रीपाल
7. श्री सुकरू लाल राम विशाल
8. श्री नान्हूलाल रामधनी
9. श्री राम स्वरूप मंडल
10. श्री राम रतन दासू
11. श्री ढिल्लूराम म्हारू
12. श्री रामलाल बिशुनदेव
13. श्री बोधन सिंह लोटन सिंह
14. श्री कंचन सिंह लोटन सिंह
15. श्री बीरनारायण शिवपाल सिंह
16. श्री ठाकुरदास अनंता
17. श्री वंद्रिका नगीना
18. श्री रामनाथ शिवचरन
19. श्री बनारसी झूरी
20. श्री चैतराम दुइजराम
21. श्री येल्लेय्या दुर्गेय्या
22. श्री दर्शन अर्जुन
23. श्री उमाशंकर शिवशंकरलाल
24. श्री माता दीन साधू
25. श्री राजकुमार अल्हवा
26. श्री रामभवन सुरजपाल
27. श्री शिवभवन छिटानी
28. श्री बैजनाथ शिव मोहन
29. श्री श्रीपाल धुन्नु
30. श्री राम अवध सनेही
31. श्री नान्हू सुबचन
32. श्री रामरूप रामजीत यादव
33. श्री शिवपूजन मोहित यादव
34. श्री इंद्रपाल बेनी
35. श्री मिठाईलाल सुखदेव
36. श्री रामदास मन बोधी
37. श्री रामदास गरी बदास
38. श्री शिवबली चुनकू
39. श्री किसन धोंडू
40. श्री माधव बिसहुआ
41. श्री शामू रघुनंदन
42. श्री हरीचंद्र बाल करन
43. श्री राजाराम येल्लावार
44. श्री पतरू तानू येलमुले
45. श्री सुखराम जंगू
46. श्री सोनेश्वर सियाराम
47. श्री जोगेंद्र रामचंद्र
48. श्री प्रमोद श्रीहरी बर्डे
49. श्री बाबूलाल बद्री प्रसाद
50. श्री धनराज जगदेव
51. श्री शिवबचन रामधनी यादव
52. श्री जगदीश रामनाथ यादव
53. श्री चंद्रदेव लक्ष्मण
54. श्री जयराम कन्हई
55. श्री लल्लन गिरजा
56. श्री मकरंद सुंदर
57. श्री सामपाल जागेश्वर
58. श्री रामप्रसाद रामबेनी
59. श्री गोरेलाल बदलू
60. श्री मोहन जायसवाल
61. श्री भोला राम असरें
62. श्री बद्री कल्लू
63. श्री बिसराम गिरधारी

64. श्री रामप्रताप महाबीर
65. श्री राम संजीवन शीतल
66. श्री बद्री फौजदार
67. श्री अदालती मातादीन
68. श्री दीनदयाल बहोरी
69. श्री राजदेव सुध्धू
70. श्री दिलराज बद्री
71. श्री भोगेन्द्र मंडल चुल्हाई मंडल
72. श्री देवमुनी चुनुकू
73. श्री कन्हाई जगन्नाथ यादव
74. श्री कुलंजन खरपतरु
75. श्री रामस्वरूप इंद्रपाल
76. श्री कुंअर सिंह बाबूलाल सिंह
77. श्री रतनपाल जियालाल
78. श्री परमूदयाल बोधोप्रसाद
79. श्री मानकुमार हरिप्रसाद
80. श्रीमती मोहनमती भोगदन
81. श्रीमती मानकुमार बिसहुआ
82. श्रीमती लक्ष्मी दुर्गेय्या
83. श्रीमती जनाबाई दौलत
84. श्रीमती पोचूबाई रामचंद्र
85. श्रीमती लक्ष्मी उप्पली
86. श्रीमती राधाबाई बिसहुआ
87. श्री अजयपाल दुलारे
88. श्री बच्चूलाल शीतलप्रसाद
89. श्री बिशाल गिल्ली
90. श्री क्षमपाल शिवमोहन
91. श्री भगवती भगवान दीन
92. श्री भोला बऊरा
93. श्री भैरवदीन बंगल
94. श्री भोला दसरथ
95. श्री बाबूलाल श्रीपाल
96. श्री छेदीलाल चुन्ना
97. श्री छेदीलाल जगरूप
98. श्री छोटेलाल दर्शन
99. श्री चंद्रिका वासुदेव
100. श्री देवनारायण दादू
101. श्री दसरथ अधीन
102. श्री दुलारे भूरा
103. श्री दुर्गा बद्री
104. श्री घनीराम शिवराम
105. श्री फूलचंद पाखंडी
106. श्री गंगा गरीब दास
107. श्री गंगाराम छेदीलाल
108. श्री गुलाबसिंह चंद्रपालसिंह
109. श्री हीरालाल सीताराम
110. श्री बदलू गने
111. श्री जोधी रामगोपाल
112. श्री कल्लू केदार
113. श्री कामता श्यामलाल
114. श्री माताबदल शिवपाल
115. श्री रामचरन बृजनाथ
116. श्री राम करन रामतिहोरे
117. श्री शिवशंकर रामप्रसाद
118. श्री शिवलाल राजा
119. श्री शिवकुमार महाबीर
120. श्री मंदिल दुखंती
121. श्री किस्टा स्वामी सिलगमवार

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 26.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 190/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2012 को प्राप्त हुआ था।

[la,y&22012@68@1995&vkbZvkj (1k&II)]
बी. एम. पटनायक, अनुभाग अधिकारी

4760 GI/12—15

New Delhi, the 10th December, 2012

S.O. 26.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 190/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 10-12-2012.

[No. L-22012/68/1995-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/190/95

Presiding Officer : SHRI MOHD.SHAKIR HASAN

General Secretary,
Sanyukta Koyla Mazdoor Sangh (AITUC),
Post Chandametta,
Distt. Chhindwara (MP) Workman/Union

Versus

Chief General Manager,
Pench Area, WCL,
Post Parasia,
Distt. Chhindwara (MP) Management

AWARD

Passed on this 21st day of November, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-220 12/68/95/IR(C-II) dated 30-10-95 has referred the following dispute for adjudication by this tribunal:-

> "Whether the action of the management of WCL, Pench Area in issuing order dt. 3-5-93 to Shri Chandradeo and 153 others posting them as Tubloaders at Thesgora, Mathani, Vishnupuri 1 & 2 , Mahadeopuri and Gajandoh mines instead of providing surface job to them is justified? If not, to what relief the concerned workmen (as detailed in the list) are entitled to?"

2. The case of the Union/workmen in short is that the management of WCL of Pench Area reinstated Shri Ram Janam and 300 other workers who were truck loaders working on surface vide order dated 6-4-92 on the order dated 13-11-90 of the Hon'ble High Court which was arising by an award dated 26-6-90. It is stated that the management of Pench Area transferred these workers in six underground mines and released from Pench East Colliery vide order dated 8-5-94. The management passed the order of transfer without considering that there would be change in service condition which is against Section 9 A of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that they had been transferred to victimize them. They had not been noticed before issuing transfer order in violation of Section 9 A of the Act, 1947. It is stated that the management had allowed selected workmen out of 301 workers to join at the places of transferred and refused others to join there. The procedure of loaders on the surface and underground is different and is change in service condition. The truck loaders was classified in Grade III under Coal Wage Board Award IV but there was no classification of Grade V A. It is submitted that the management was not justified in transferring these workmen.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that admittedly the CGIT-cum-Labour court, Jabalpur gave an award dated 27-6-90 whereby the workmen were entitled to be employed as Truck Loaders or in the similar capacity as the case may be, from the date of re-opening of the quarry i.e. 21-6-80 with back wages and all consequential relief with Rs. 5000 as costs. Out of 301 workers, nine workers were appointed/reinstated in Maharashtra Areas. 292 workers were taken in employment on the identification by Shri P.K.Bannerjee, the then General Secretary of the Union in Pench Area as per the order of the Hon'ble High Court. These workmen did not furnish their personal particulars for form B statutory register. The management could not assign any job to them for gainful utilization. In order to utilize the gainful services of these 292 workers, they were deployed as underground tubloaders in May 1994 by issuing individual posting orders. Out of 292 workers, 192 workers reported to their duties at their new places of posting and completed the statutory register. But the rest 100 workers did not turn up to their duties and the action of termination of their appointment on own accord was brought on the record after conducting a departmental enquiry. The Union challenged the action of the management resulting in reference case No. CGIT/LC/R/88/95.

4. The further case of the management is that there was no work in Digwani Quarry and the alternative left before the management was to give them employment of loaders. The job was available at Thesgora, Mathani, Vishnupuri No. 1 & 2 Mahadeopuri and Gajandoh mines. The management deployed the workers in those mines in their interest. The truck loading was no more carried on manually but by mechanical process. The job of truck loader was not available for anyone. In case there was some such work available in Digwani Quarry at the relevant time, it was impossible that so many persons could have been employed in the said colliery as Truck loaders. The other alternative before the management was to retrench

the workers being surplus but this would thrown the workers out of the employment. It is stated that service conditions are not changed. In this particular case, the wages of Truck Loader is about 1270 per month in Group III whereas the entitlement as of Piece Rated Tub loader is Rs. 2360 per month in Group VA. The management always have a right to adjust the available, manpower, effectively and suitably. Duties, work place, nature of work all can be changed depending on circumstances. It is submitted that the action of the management in posting them as Tub loaders be declared as legal, proper and justified.

5. On the pleadings of both the parties, the following issues are framed for adjudication-

I. Whether the action of the management by passing order dated 3-5-93 for changing the work from surface to the work of tub loader in underground mines to Shri Chandradeo and 153 others is justified?

II. To what relief the workmen are entitled?

6. Issue No. I

It is evident from the pleadings of the parties that the following facts are admitted.

1. CGIT-Cum-Labour Court passed an award dated 26-27-6-90 whereby the workmen were entitled to be reinstated as Truck loaders or in the similar capacity as the case may be from the date of reopening of the quarry i.e. 21-6-1980 with back wages and all consequential relief with Rs.5000 as costs.

2. 292 workers were reinstated at Pench Area vide order dated 6-4-92 on the basis of subsequent order dated 13-11-90 of the Hon'ble High Court which was arising by an award dated 26-6-90 of the Tribunal.

3. These workers were deployed/transferred in the newly established under ground mines at Thesgora, Mathani, Vishnupuri No.1 & 2 , Mahadeopuri and Gajandoh mines as tub loaders in May 1994.

4. 192 workers joined at the new places of posting.

5. These 100 workers did not join or allowed to be joined at the new places of posting. The Union challenged the transfer resulting in this reference case.

6. The Truck loader is in Group III where as Tub loader is Group V A in classification.

7. No notice was given to the workmen and thereafter transfer from Truckloader to tub loader was not effected after 21 days of giving notice under Section 9 A of the Act, 1947.

7. The only important point is raised as to whether there was change in the conditions of services from Truck loaders to tub loaders and the provision of Section 9 A is applicable. Before discussing the point in question the Section 9 A of the Act, 1947 is reproduced as under :—

"Section 9 A Notice of Change-

No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change-

(a) Without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) Within twenty one days of giving such notice:"

It is clear that there are three ingredients of Section 9 A of the Act, 1947 which are as follows-

1. The first point is the proposal by the employer to effect a change.

2. The second point is to give notice to the workmen of the nature of change proposed to be affected.

3. The last point is that the effects of change in service conditions are to be done on expiry of 21 days from the date of notice.

8. Now on the basis of above provision, let us examine the evidence on the record. It appears that mostly the facts are admitted by the parties. It is an admitted fact that as per award the workmen were Truck loaders and they were accordingly reinstated. It is an admitted fact that the Truck loader is in Grade/group III whereas Tub-loader is in Grade/Group V.A in classification. The Fourth Schedule of the Act, 1947 deals conditions of service for change of which notice is to be given. Clause 7 of the said schedule deals classification by grades. Thus on the basis of admitted fact, the classification of Truck Loader and Tub loader are different and the said transfer of these workmen from Truck Loaders to Tub loaders was change in service conditions. This shows that the transfer could only be effected after complying the provision of Section 9-A of the Act, 1947.

9. The management has not adduced any documentary evidence in the case to prove that a notice was given to the workmen before transfer with a proposal by the management to effect a change in service condition and the management acted after 21 days on such notice. The management has examined only one witness in the case. Shri Ram Mohan Chandok, Sr. Manager (Personnel) is working at Rawanwara/Chhindwara Sub Area. He has come to support the case of the management. He has stated at para-5 that 292 persons were deployed as underground

loader in May 1994 by issuing individual posting order. This shows that they were transferred from Truck Loader from surface to Tubloaders in underground mines. He has further stated at Para 18 that the wages of a Truck Loader is about Rs. 1270 per month in Group III whereas entitlement as of PR tub loaders is included in Group VA and their payment to the extent of Rs.2360 per month. His evidence clearly shows that these workmen were in Grade/Group III and they had been transferred in Grade/ Group VA. This itself shows that there was change in the. classification by grades as has been indicated in the Fourth Schedule of the Act, 1947. The evidence of the management also shows that there was change in the service condition and the provision of Section 9A of the Act, 1947 was attracted. It is evident that without complying the provision of Section 9 A of the Act, 1947, the order of transfer of these workmen by the management was not justified. This issue is decided in favour of the Union/workmen and against the management.

10. Issue No. II

On the basis of the discussion made above, it is clear that the management is not justified by passing order dated 3-5-93 for changing the work from surface to the work of tub loader in underground mines of the workmen in reference. Those workmen who had not joined the new places of posting are directed to be allowed to join their duty with full back wages. The reference is accordingly answered.

11. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 27.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 16/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/257/1993-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 27.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/94) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 10-12-2012.

[No. L-22012/257/1993-IR (C-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/16/94

Presiding Officer : SHRI MOHD. SHAKIR HASAN

The Secretary,
Food Corporation of India,
Labour Congress Union,
29, Vijay Nagar, Chhapa,
Jabalpur. Union/Workman

Versus

The District Manager,
Food Corporation of India,
Wright town,
Jabalpur

Sr. Regional Manager,
Food Corporation of India,
Chetak Building,
Maharana Pratap Nagar,
Habibganj, Bhopal. Management

AWARD

Passed on this 14th day of November 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/257/93-IR(C-II) dated 31-1-94 -has referred the following dispute for adjudication by this tribunal :—

> "Whether the demand raised by Shri Dinanath Dubey, Representative of workmen of the 15 gangs working at Rampur Depot of FCI, Jabalpur in demanding their services should be deemed with FCI and wages fixed at the piece rate should be distributed only between the workman working along with the gang including sardars and their transfers should be made on the guidelines prescribed for FCI and not on the recommendation of FCI workers Union is justified? If so, what relief the workmen are entitled to?"

2. And the Government of India, Ministry of Labour vide its Corrigendum No.L-22012/257 /93-IR(C-II) dated 2-12-2002 has referred the following dispute for adjudication by this tribunal :—

"Whether the demand raised by Shri Dinanath Dubey, Representative of workmen of the 15 gangs (list enclosed) working at Rampur Depot of FCI, Jabalpur in demanding their services should be deemed with FCI and wages fixed at the piece rate should be distributed only between the workman working along- with the gang including sardars and their transfers should be made on the guidelines prescribed for FCI and not on the recommendation of FCI workers Union is justified? If so, to what relief the workmen are entitled to?"

3. The case of the Union/workmen in short is that the Food Corporation of India (in short FCI) was constituted by the Act of the Parliament. The object of FCI is for procurement, storage and distribution of Food Grains through out the country. The Depots under the District offices are situated wherein Food grains are stored and from where they are distributed to dealers and other outlets for the sake to the General Public. For the purpose of effective procurement, storage and distribution of food grains and other items, contractors were appointed for loading and unloading, handling and transport works.

4. The further case of the Union is that since 1967 Jabalpur Depots started functioning and handling and transport contractors were appointed for loading, unloading and transportation work upto 26-9-1989. These workmen were working since last several years as Mazdoors/coolies in the Jabalpur Depot though the handling and transport-contractors who were changing time to time but the mazdoors working in the Depot remained same. During the period from 1974 to 1979 there were 126 mazdoors and from 1980 There are 180 mazdoors working in the depot. These workmen are working for the last 20 years in the Depot. It is stated that in 1989 handling and Transport contractors were discontinued and a scheme known as Mate System was introduced in Depots. Under the scheme, a mate was nominated for each depot who in turn executed an agreement with the District Managers under whose jurisdiction the depots fall. The Mate used to function as per agreement. In the meantime, the various Trade Union and other workers started demanding throughout the country for departmentalization of handling, loading and unloading mazdoors. Thereafter mazdoors working 69 depots throughout the country were departmentalized by notification dated 1-11-1990 and were made the employees of FCI. It is stated that the mazdoors of 15 depots of MP were also departmentalized.

5. The further case of the union is that these workmen in reference are exactly similar and identical to the mazdoor who have been departmentalized by the aforesaid notification but without any justification the case of these workmen was not considered for departmentalization. The action of FCI is discriminatory, arbitrary and unjust. After introduction of Mate System these workmen started agitation for departmentalization. Then some of the Unions having vested interest gave a representation to Regional Manager, Bhopal to transfer those workmen to Mandirhasaud and Bagbaharan Depots against the conditions of employment of Mate System. The Regional Manager, FCI, Bhopal transferred 29 workmen to those depots vide orders dated 25-1-91 and 27-1-93 at the instance of the Union without any justification. It is stated that their works are of permanent nature and these workmen are working under the complete Control and supervision of the management of FCI. In case. of any misconduct the action against the mazdoors are taken by the FCI. Tools and equipments required for work were given by the FCI. It is stated that without any justification, these workmen are not treated as employers of the FCI though they are doing identical work and duties from those mazdoors who have been departmentalized. It is stated that the agreement of Mate system is nothing but to deny the rightful claim of these workmen by the management and is amount to unfair labour practices. It is stated that in similarly situated case, this Tribunal passed an award in Reference Case No. CGIT/ LC/R/32/85 whereby the management of FCI was directed to regularize the workman. The action of the management in not regularizing these workmen and not paying them wages and other benefits be held unjustified.

6. The management appeared in the case and filed Written Statement by way of statement of claim. The case of the management, inter alia, is that the list of the employees has not been given in the reference order nor it is enclosed with the reference order dated 31-1-1994. As such the reference is not maintainable. It is stated that the dispute of identical nature is also referred to the National Tribunal and is pending before the National Tribunal at Bombay. Therefore the principle of res-judicata is applicable.

7. The further case of the management is that admittedly the FCI is a statutory corporation constituted under the FCI Act to deal in imports, procurement, storage and distribution of food grains having its offices and depots throughout the country. The FCI usually appointed Handling and Transport contractors for getting the work done. The contractors used to engage labourers which was their lookout. The FCI had neither administrative control nor any disciplinary control over them. The FCI paid to the contractors on the basis of per bag. There was a Union named as Food Corporadon of India Workers Union registered under the Trade unions Act to safeguard the interest of the workers including the contractors workers. On the request of the Union, the management introduced mate system in certain depots of the FCI in all over the country including the State of Madhya Pradesh in a meeting held on 26-9-89. Such mate system was also introduced vide letter dated 3-11-89 in the depots and godown at Jabalpur and an agreement was entered between

the management and FCI Workers Union. Under mate system, the workers Union had to nominate the mates for each depots who in turn would execute an agreement with the District Manager. In other words, the mate entered into' the shoes of contractor who was paid on the basis of per bag and not to the labourer. Such mate was also required to obtain the licence under the Contract Labour (Regulation and Abolition) Act, 1973. It was the responsibility of the mate to arrange labourers on receipt of intent from the Depot incharge. The work slips were prepared and issued in the name of mates as per schedule rates.

8. The further case of the management is that Shri Dinanath Dubey, Radhe and Ram Singh were active members of the FCI workers Union and they signed all the agreements as per the guidelines and instruction issued by their Union and the same is binding effect under Section 18 of the Industrial Dispute Act, 1947 (in short the Act, 1947) . The mate system was introduced to abolish contract labour system and to encourage formation of cooperative movement. The appointment of mates, their transfers, their service conditions were vested with the FCI Workers Union. After introduction of mate system at Jabalpur, there was quarrels between the gangs. The management discussed the matter with office bearers of the Union at Bhopal. The Workers Union requested to the Senior Regional manager to shift gang No. 11and 19 to Mandir Harsood to Jabalpur and gang No. 1 from Jabalpur to Mandir Harsood and gang, No. 3 from Jabalpur to Bagbahara depot. The Senior Regional Manager passed order to shift them accordingly. Shri Dinanath Dubey and others challenged the order before the Hon'ble High Court in M.P.No. 822/1993 . The said petition was allowed by order dated 25-1-93 and 27-1-93. Subsequently the management filed Special Leave Petition before the Hon'ble Supreme Court which was also dismissed. Therefore the question of shifting of gangs from one place to another 'has been settled by virtue of the said judgment. It is stated that there is no employee-employer relationship between the workers working with gangs engaged by mates and FCI. Therefore the question of regularization does not arise. It is stated that the FCI Labour Congress Union has no substantial members in the State nor in Jabalpur District and therefore the present Union has no locus standi to raise the dispute. It is submitted that the Union/workmen are not entitled to any relief and the same be dismissed.

9. On the basis of the pleadings of the parties, the following issues are framed for adjudication :—

I.Whether the demand raised by Shri Dinanath Dubey, representative of workmen of 15 gangs working at Rampur Depot of FCI, Jabalpur that their services should be deemed to be with FCI is justified?

II. Whether the wages fixed at the piece rate should be distributed only between the workmen working alongwith the gang including sardars is justified?

III. Whether their transfers should be made on the guidelines prescribed for FCI and not on the recommendation of the FCI workers union is justified?

IV. To what relief the workmen are entitled?

10. On the pleadings of both the parties, the following facts are admitted :—

1. The FCI is a statutory body constituted under the FCI Act, 1964.

2. The object of the FCI is for the procurement, storage and distribution of Food grains throughout the country and the depots under the District Offices are situated wherein food grains are stored and from where they distribute to dealers and other outlets for sale to the General Public.

3. Contractors were appointed for handling, loading and unloading and transport works till 1989.

4. These workmen were working as Mazdoor/coolies in Jabalpur depot through handling and transport contractors.

5. The handling and Transport contractors were discontinued in 1989 and a scheme known as mate system was introduced in the depots and godown at Jabalpur vide letter dated 3-11-89.

6. An agreement was entered between the District Manager under whose jurisdiction the depots fall and FCI Workers Union. The mate used to function as per agreement.

7. The Union and workers started demanding through out the country for departmentalization of handling, loading and unloading mazdoors.

8. Thereafter mazdoors working in 69 depots throughout the country were departmentalized by notification dated 1-11-90 and were made the employers of FCI except these workers of the depot and godown of Jabalpur.

9. The mazdoors of 15 depots of MP were also departmentalized.

10. The Senior Regional Manager, Bhopal transferred Gang No. 1 from Jabalpur to Mandir Harsood and Gang No. 3 from Jabalpur to Bagbaharan depot on the request of workers Union.

11. Shri Dinanath Dubey and others challenged the order of transfer before the Hon'ble high court of MP in MP No. 322/1993.

12. The said transfer order was quashed by the Hon'ble High Court of MP vide orders dated 25-1-93 and 27-1-93. Subsequently the management filed special leave petition before the Hon'ble Supreme Court which was also dismissed.

13. A reference Case No. CGIT/LC/R/32/85 whereby it was to be adjudicated that the action of the Regional Manager, FCI, Bhopal in not regularizing the 25 workers w.e.f. 1-12-1983 is justified. In the said reference award was passed regularizing the workmen which was upheld by the Hon'ble High Court of MP in MP.No.3215/86. It is only alleged by the management that the case of these workers was different.

11. Issue No. I

Before discussing the issue, it is relevant to say that the management has raised dispute that in the reference order, the list of the employees are not given in the reference order nor attached with the same. Therefore the reference is not maintainable. It is not out of place to say that the corrigendum dated 2-12-2002 is substituted in the reference order dated 31-1-1994 whereby the list of 180 workmen of 15 gangs are attached. This shows that reference order is maintainable. Another question raised by the management is that identical nature of dispute is referred to the National Tribunal, Bombay and is pending before the National Tribunal and therefore the principle of resjudicata is applicable. The management has filed notice of the national industrial Tribunal, Bombay along with reference order and list of the depots including Railway Siding. This is marked as Exhibit M/1. This clearly shows that it is not related to the depot of Jabalpur whose workmen have raised dispute to treat them of the employees of the management and these workmen/Union is not party to the reference. It also appears that the dispute is not yet decided nor this reference is styed by any competent court. This is evident that the principle of resjudicata is not applicable in the case.

12. Now the important question for determination is as to whether the workmen of 15 gangs (list enclosed) working at Rampur Depot of FCI Jabalpur shall be deemed to be direct employees of the FCI and if so then from which date? According to the Union/workmen in the year 1989 Handling and Transport Contractors were discontinued and a scheme known as Mate system was introduced for each depot who in turn executed an agreement with the District Managers under whose jurisdiction the depots fall. The Mate used to function as per agreement. It is stated that the works of the workmen are of permanent nature and they were in complete control and supervision of the management of FCI. The action against the workmen for misconduct was being taken by the FCI. Tools and equipments required for work were given by the FCI. It is stated that the agreement of Mate System is nothing but to deny the rightful claim of the workmen and is amount to unfair labour practices. On the other hand, the case of the management is that the Mate System was introduced on 3-11-89 in the depots and godown of Jabalpur also. Infact the Mate entered into the shoes of the contractor who was also required to obtain licence under the Contract Labour(Regulation and Abolition) Act 1973. The active members of the FCI workers Union signed over the agreements as per guidelines. It is stated that there is no employee and employer relationship between the workers working in the gangs engaged by mates and the FCI management. Therefore the question of regularization doesnot arise.

13. To prove the case that the mate system introduced by the management is nothing but to deny the rightful claim of the workmen and is amount to unfair labour practice and infact these workmen are under direct control of the management, the Union has examined oral and documentary evidence. The Union has examined three witnesses in the case. The Union witness Shri Ram Singh was working at FCI Jabalpur. He was General Secretary of the Union. He has supported the case of the Union that these workmen were under the direct control of the management. He has also admitted that the mate system was introduced in the year 1989 in the depots. The mate used to function as per agreement but no such agreement is filed in the case to determine the status of the workmen. He has stated that the mazdoors of 69 depots throughout the country out of which 15 depots of MP were departmentalised vide notification dated 1-11-1990 but these workmen without any justification whose work was exactly similar and identical were not considered by the management for departmentalization. He has stated that these workmen are performing a permanent nature of job continuously without break and are working under the direct supervision of the management of FCI. The management had also transferred some of these workmen from one depot to another. This clearly shows that these workmen were under the direct control of the management of FCI. He has also stated that in case of misconduct, the action was taken by the FCI management. Tools and other equipments required for discharging duties are given by the management. He has stated that the mates used to supervise the work of the mazdoors. He has further stated that the payments were made to the workmen directly to the workers and were not being paid through mates. He has stated that direct payment system (in short DPS) was introduced on 1-4-92. However the evidence of this witness clearly shows that even in mate system these workmen were under direct control of the management and similarly situated mazdoors are departmentalized in other 69 depots through out. the country but they were denied without any justification.

14. Another Union witness is Shri Dinanath Dubey. He has also supported the case of the Union and has corroborated the evidence of Shri Ram Singh. He was President of the Union. He has stated that the contract system was discontinued in FCI depots in the year 1990-91. Thereafter he was paid on the rate of contractor as piece rated in Mate system. Then DPS was introduced in the year 1994 and payment was made directly by the FCI on the basis of work done by them. He has stated that among labours, there was one mate who used to take work. The payment was made by the FCI employee in mate system. He has also supported this fact that gang no. 3 and gang no. 1 were transferred from Jabalpur to other places by the FCI. His evidence also corroborates the fact that the control on the workers were of the management FCI and they deemed to be employees of the' FCI from the date of introduction of mate system. Another witness Shri Radhe Shyam was not produced by the Union. for cross-examination. His evidence is of no use to the Union.

15. The Union has also adduced documentary evidence to establish his case. Exhibit W/1 is the copy of the award dated 25-5-1986 passed in Case No. CGIT/LC/R/32/85 by the Tribunal, Jabalpur of 25 workers. This is filed to show that these workers were also handling workers of the FCI depot. Their case is similar to the case of the mazdoors of this reference. The action of the management in not regularizing these 25 workers was held not justified. Exhibit W/2 is the order of the hon'ble High Court passed in Misc. Writ Petition No. 3275/86 on 23-3-93 whereby the management challenged the award dated 25-5-1986 passed by the Tribunal. The Hon'ble High Court upheld the award on the point of regularization of these workers but the direction, for payment of difference of wages for the said period was denied. This shows that these workers are entitled to be regularized.

16. Exhibit W/3 is the judgment dated 26-2-85 of the Hon'ble Supreme Court passed in Civil Appeal No. 1055 (NL) of 1981. This is filed to show that the contractor system was abolished and the workmen were directly paid the wages at piece rated by the corporation at Siliguri depot. The Sardar /Mandals accepted payment and signed bills on their behalf and distributed the wages to the handling labours. It is submitted by the learned counsel of the Union that, the Hon'ble Apex Court has held that the workmen became the workmen of the Corporation. The Hon'ble Apex Court has held that—

> "Can there be any doubt about the relationship between the Corporation and the workmen since the date of abolition of the contract system and introduction of direct payment system as discussed herein? It is nowhere suggested that Sardars/ mandals were contractors. They were merely the agents of the corporation for distributing the salary/ wages earned by each workman as set out in the register to be maintained in respect of each workman by his name and the wages earned by him at the piece rate. Assuming as was contended by Mr. Kacker on behalf of the respondent Corporation that once the rate remained unchanged even after the removal of the contractor, direct payment system doesnot bring about any qualitative change in the status of workmen, a fact that stares into the eye and the one that cannot be overlooked is that the contractor had not undertaken the contract obligation for some altruistic motives. He had done so for earning for profits. Now accepting what Mr. Kacker and Mr. Pai submitted that the rates remained unchanged the qualitative change in the position of workmen consequently would be, that the workmen's earnings at piece rate accelerated upward because the contractor's commission what ever he retained into himself became available to the workmen and they benefitted. Therefore, the abolition of the contract system and the introduction of direct payment system hereinbefore discussed brought about a basic qualitative change in the relationship between the corporation and the workmen engaged for handling foodgrains in that on the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the contractor and the workmen. To illustrate this point succinctly, let it be made clear that it was obligatory for the corporation to arrange for handling the bags of food grains. The workmen handled the foodgrains for the corporation and none else. For this service rendered, the corporation agreed to pay and paid wages at piece rate to each workman whose name appeared in the register to be maintained for the purpose as per the directions given by the District Manager. If the pay packets were actually distributed by Sardars/mandals, they can be said to be doing clerical work on behalf of the corporation in the same manner as a clerk in the Accounts department prepares and distributes pay packet for each employee of the Corporation month to month. If the clerk cannot be said to be employer, ipso facto the Sardars/Mondals could not be clothed with the status of the replaced contractor. The intermediary screen having disappeared, is inescapable that since the introduction of the direct payment system, the workmen became the workmen of the corporation and a direct master-servant relationship came into existence."

In this particular case also the contract system was admittedly abolished and the mate system was introduced in the year 1990-91. The mate used to accept the payment and distribute the wages to the handling mazdoors of the

depots of Jabalpur though the control on the mazdoors was of the management. Subsequently the DPS was admittedly introduced and these mazdoors of Jabalpur were paid wages directly. This clearly shows that these workmen became the workmen of the Corporation and a direct master-servant relation came into existence from the date when the mate system was introduced at Jabalpur depots after discontinuation of contractors.

17. Exhibit W/4 is the notification dated 1-11-90 whereby the 62 depots in which the process operation or work of handling of food grains, including their loading and unloading from any means of transport, storing and stacking the employment of contract labour in the godowns and depots of the FCI was prohibited under the provision of Sub Section (1) of Section 10 of the contract Labour (Regulation and Abolition) Act, 1970. The said notification shows that 15 depots of MP were also notified and contract labours were prohibited but in the said notification Rampur depot of FCI Jabalpur was not notified. The handling labours of this depots were also doing the same job but there is no evidence on the record as to why this depot was excluded. This shows that there is discriminatory and arbitrary action of the management of FCI in not notifying this depot as prohibited degree of work. Moreover the work of handling into foodgrains in FCI was prohibited degree of work and mate system was not a contract system.

18. Exhibit W/5 is the circular letter dated 18-5-93 of the FCI issued to the Zonal Managers and to the Sr .Regional Managers including Bhopal under whom the Jabalpur Depot is situated whereby the management had decided to pay minimum wage of Rs. 26 per day (or Rs.700 per month) or the actual wages earned to the labours of Mate/workers Management Committee (WMC) System w.e.f. 1-4-92. Admittedly the mate system was introduced at Rampur depot of FCI Jabalpur. This circular was applicable to these workers. This shows that the wages were being fixed by the management and as such they were under the direct control of the management. Exhibit W/6 is another circular dated 24-8-93 of the FCI issued to the Zonal Managers and Sr. Regional Managers including Bhopal whereby the management decided to pay weekly off to the workers working under the Mate/WMC system. This is also filed to show that these mazdoors who were in mate system were directly controlled by the management. As such the management decided their condition of services. Exhibit W/7 is a circular letter dated 11-10-94 of the FCI to the District Manager including Jabalpur regarding payment of overtime to Sardar/Mandal. Exhibit W /8 is a letter dated 20-9-94 of the FCI. The said letter is not legible and it cannot be used in evidence in the case.

19.Exhibit W/9 is a memorandum of settlement dated 13-6-1994 between the FCI management and FCI Workers Union. This is filed to show that the management of FCI agreed regarding payment of overtime work of the mazdoors of DPS or mate system (B category workers) and also revised the minimum guaranteed wages. The Annexure of the said settlement shows that Jabalpur is at S.N.52. It also appears that the management agreed to extend further tringe benefits. This clearly shows that the agreement was entered with the Union and not with mate and mate appears to be only agent of the management and he was not treated as contractor. It also appears that the management agreed to pay the wages and other benefits to the workers of mate system. This shows that these workers were in the direct control of the management after discontinuation of contractors. Exhibit W/10 is a circular letter dated 22-8-94 whereby 9 depots were also added who were working under Mate/WMC System.

20. Exhibit W/11 is the circular dated 5-12-1994 of the FCI. This circular is also filed by the management which is marked as Exhibit M/2. This circular is an admitted document. The circular dated 5-12-1994 shows the Mate/ WMC System workers were upgraded to the status of Direct Payment System (DPS) Labour and exgratia in lieu of bonus to the workers of the Mate/WMC system was to be paid w.e.f. 1-4-92. This circular also shows that the relationship of employer and employee was existing between the management of FCI and the workers of Rampur depot of FCI, Jabalpur who were mate system workers and their services should be deemed to be with FCI.

21. Exhibit W /12 is the order dated 17-8-93 passed in MP No. 822/93 by the Hon'ble High Court at Jabalpur filed by the workmen Shri Deenanath Dubey and Shri Ram Singh against transfer order of the management FCI. This order is filed to show that these workmen were under the direct control of the management FCI as such the management of FCI had passed the order of transfer of some of these workers. The order of transfer was set aside by the Hon'ble High court as the transfer order was passed by the management at the instance of the Union. However this order further shows that these handling workers of Rampur depots, Jabalpur was under direct employment of the management. Exhibit W/13 is order dated 14-7-94 passed in SLP No. 463/94 arising out of MP No. 822/93 by the Hon'ble Apex Court filed by the management FCI which was dismissed. Thus the oral and documentary evidence adduced by the Union/workmen clearly show that these workmen are deemed to be of the employees of the management FCI who are in the direct control of the management.

22. On the other hand, the management has also adduced oral and documentary evidence. The management has examined only one witness namely Shri Devesh kumar Yadav who is working as Area Manager, FCI, Area

Office, Jabalpur. He has come to support the case of the management. He has no personal knowledge of the facts of the case. He has deposed on the basis of the record. He has admitted in his evidence at para-3 that upto 1989 the FCI used to appoint handling and transport contractors for getting the handling and transport workdone at various depots including at Jabalpur. He has stated that the mate system was introduced at the depots/godowns Rampur, Jabalpur by way of agreement between the management and the Union. Though it is marked in the examination-in-chief by the witness but no such agreement is filed in the case. However it is an admitted fact that Mate System was introduced in depots/godowns of Rampur, Jabalpur but the terms of agreement is not admitted and is not proved by the management. This fact can only be proved by the production of the agreement itself. The management has intentionally concealed the said agreement for the reason best known to him which may easily disclose the status of the workman. He has stated at para-7 that Shri Deenanath Dubey, Radhe and Ramsingh as mates of Food Storage Depot Rampur Jabalpur, were authorized to receive payment of handling workers from FCI and distribute the payment among themselves but there is no such document and he denied at para-17 any agreement with them. His evidence shows that these mates act as agents to distribute payment. It also shows that these workers were handling mazdoors but subsequently this witness has shown his ignorance and the credibility of the evidence of the management witness is doubtful. He has supported the case of the Union that some of these mazdoors of Rampur Depots, Jabalpur were transferred to another depots. This shows that the management had control over the workers and they were in the services of the management. He has stated that he had not seen any paper that the mate used to take wages from management and paid them to the labours. This clearly shows that there is no document of payment of wages by the mates. He has also admitted that these workers were subsequently made under direct payment system (DPS) and mate system was ended. Thus the evidence of the management witness also supports that these workmen were in direct control of the management from the date of introduction of mate system and became workers of the FCI.

23. The management has adduced few documents in the case. Exhibit M/1 is the notice of National Industrial Tribunal, Bombay which is numbered as NTB-1/92/46/92 dated 3-1-92 . This is filed to show that the similar type of case is pending for adjudication before the National Tribunal. It appears that there is no stay order. Moreover there is no proof that the said reference is either still pending or has been disposed off. Lastly the list of depots attached doesnot disclose the name of Rampur depot, Jabalpur. This notice is not at all helpful to the management.

24. Exhibit M/2 is the circular dated 5-12-94 . This is an admitted document whereby these workers were upgraded from Mate system to DPS. The relevancy of the document is already discussed earlier. The Jabalpur depot is also figured at S.N. 51. Exhibit M/3 is another circular of the FCI dated 6-12-1994 whereby certain direction was further given in addition to the earlier circular dated 5-12-94 for clarifying the strength of labourers who were upgraded from Mate/WMC system to Direct Payment System. If excess manpower was available in any particular depot, those labourers be shifted and adjusted in any other depot. These circulars support the case of the union that these labourers were under the employment of the FCI directly.

25. Exhibit M/4 is the order dated 17-5-96 passed by the Hon'ble High Court at Jabalpur in W.P. No. 3951/95 whereby the workmen challenged the order of transfer dated 24-11-1995 of the FCI to different depots. Para-8 of the order the Hon'ble Court is as follows :—

> "Since the petitioners have been departmentalised and facilities available to the directly recruited employees have been extended to the departmentalized mazdoors, the departmentalized mazdoors as per the terms of settlement between the management and workers Union cannot be allowed to resist their transfer when there is no sufficient work for them at Jabalpur."

This order shows that the management FCI had specific case that the management had full control over the sardar, Mandal and handling mazdoors and therefore the Hon'ble High Court dismissed the writ petition of the workmen whereby transfer order was challenged. This fact establishes that the management had admitted that these handling mazdoors working under Rampur depot of FCI, Jabalpur are in the direct services of the FCI. Exhibit W/ 5 is the order dated 10-7-1995 of the Hon'ble High Court passed in contempt petition No. 159/95 whereby the contempt petition was disposed off. Exhibit W/6 is order dated 18-10-96 passed in another contempt petition No. 264 dated 1996 by Hon'ble High Court at Jabalpur whereby the Hon'ble High Court was pleased to convict and sentence to pay a fine of Rs.2000 each within week to the management Respondents. Exhibit M/7 is the order dated 17-12-1996 passed by the Hon'ble High Court in Contempt appeal No. 1342/96 Para-19 of the order reads as follows :—

> "After we had closed the case for orders, the learned counsel for the FCI has filed before us on 3-12-1996 an application stating that in order to maintain industrial harmony, the following decision has been taken by the FCI :—
>
> That without prejudice to the aforesaid and also to maintain industrial harmony the undersigned hereby

shall cancel the order of transfer of the respondents on the roll of the management on this date and further shall invite option/willingness from them to be accommodated in any other Depot, wherever direct payment system exists and there is a requirement of labour force. The option/willingness would be invited considering the insufficiency of work at Rampur Depot, Jabalpur. The management thereafter take the necessary decision as per law, by considering the aspect of the persons willing to go on transfer and those not willing to go on transfer. The same treatment will be given to those persons out of 16 respondents superannuated by the management, after when any court sets aside their superannuation.

That, the order of transfer shall be cancelled within seven days of the order of this Hon'ble Court and further they would be allowed to join the duties at Rampur Depot, Jabalpur the workers will be given option forms as above to submit the same within 15 days therefrom, within 30 days therefrom the decision as per option shall be taken by the management in accordance with law. The communication in this regard shall be made through the counsel of respondents. This would be done as a special case, as a one time measure."

"The appellants have thus shown their bonafides in the matter and have also taken a decision to break the stalemate created."

On the basis of aforesaid reason, the Hon'ble High Court at Jabalpur allowed the appeal and set aside the impugned order dated 18-10-96 whereby the appellants management were held guilty. However this aspect clearly shows that these workmen were in direct control of the management and they were in the services of the management. Exhibit M/8 is another contempt appeal No. 1204/96 against the same order. This appeal was also disposed off in terms of the order passed in M.A. No. 1342/96.

26. To sum up the entire evidence of both the parties, it is clear that admittedly Handling and Transport contractors were discontinued and Mate system was introduced in the Rampur depot of FCI, Jabalpur. There is no document to establish the Mate entered into the shoe of contractor rather the evidence shows that the management has complete control over the sardar, mandal and handling mazdoors and passed order or transfer from one depots to another depots, the management decided to pay minimum wages or actual wages earned to the labours under Mate System w.e.f. 1-4-92 and also paid bonus to the labourers engaged under Mate System w.e.f. 1-4-92. Lastly they were upgraded to the status of DPS. These facts clearly show that these workmen deemed to be in the services of the management w.e.f. 1-4-1992. This issue is accordingly decided in favour of the Union/ workmen and against the management.

27. Issue No. II

Now the another question is as to whether the wages fixed at the piece rate should be distributed only between the workman working alongwith the gang including sardar is justified? It is an admitted fact that after introduction of direct payment system (DPS), the payment of wages are being done directly to handling labours and Sardars by the management of FCI on the basis of minimum wages or the actual wages earned to the labourers. In support of the case both the parties have filed the circular dated 5-12-94 which is marked as Exhibit M/2 and also as Exhibit W /11. This circular clearly shows that DPS is adopted with regard to payment of wages to these handling labourers. Exhibit W/5 is the circular letter dated 18-5-93 of the FCI which shows that the management used to pay minimum wages or the actual wages earned to the labourers. Thus this issue is already decided by the management that wages fixed at piece rate be distributed only between the workers including sardar with the gang. This issue is accordingly decided.

28. Issue No. III

Another question is as to whether their transfer should be made on the guidelines prescribed in FCI and not on the recommendation of the FCI workers Union? It is an admitted fact that the transfer made by FCI to these labourers of mate system to other depots of FCI at the instance of the workers Union was challenged before the Hon'ble High Court at Jabalpur and the Hon'ble High Court was pleased to set aside the transfer order. It is established that these workmen are in the direct services of the management of FCI and therefore they are entitled to be transferred on the guidelines prescribed in FCI and not on a recommendation of FCI Workers Union. This issue is also accordingly answered.

29. Issue No. IV

On the basis of the discussion made above, it is evident that the direct relationship between the management of FCI and the labourers of Rampur depot of Jabalpur came into existence w.e.f. 1-4-1992 when the management decided to give wages, bonus and other benefits while working under Mate system. They are entitled to be departmentalized from the said date with all benefits arising there off. The management of FCI is directed to pass order within two months from the date of award accordingly. The reference is accordingly answered.

30. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 28.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 31/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/206/89-डी-II(ए)/आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 28.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 23-11-2012.

[No. L-12012/206/89-D-II(A)/IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 31/2011

Shri Kastoori Lal
S/o Late Sh.Malu Ram,
R/o A-115, Munirka,
New Delhi - 110066.

... Workman

Versus

The Chief Manager,
Indian Bank,
Safdarjung Development Enclave
New Delhi.

....Management

AWARD

A personal driver was engaged by Shri K.V. Ramanujan, Officer, Indian Bank (in short the bank) in August, 1985. When Shri Ramanujan was transferred from Safdarjung Enclave branch of the bank, Shri Sunder Lal Goel joined in his place. The personal driver, engaged by Shri Ramanujan, requested Shri Sunder Lal to engage him as his personal driver. At his request, Shri Sunder Lal also engaged him as personal driver. He was driving vehicle No.DIA 6417, which vehicle was owned by the bank. His wages were paid by Shri Ramanujan and Shri Sunder Lal, when he was engaged by them. Since his services were dispensed with by Shri Sunder Lal in September, 1988, the personal driver raised a demand on the bank for reinstatement of his services, which demand was not conceded to. He raised an industrial dispute before the Conciliation Officer. The bank contested his claim and as such conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government opted not to refer the dispute for adjudication vide order No.L-12102/206/89-D II (A), New Delhi dated 1-9-1988. Aggrieved by the said order, the personal driver preferred a writ petition before the High Court of Delhi, being WP No.3222/89. Vide order dated 12.02.1991, the High Court commanded the appropriate Government to refer the dispute for adjudication. In compliance of the missives so given, the appropirate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/206/89-D II(A), New Delhi dated 15.03.1991, with following terms:

> "Whether the claim of Shri Kastoori Lal that he was an employee of Indian Bank, Safdarjung Development Enclave branch is correct. If so whether the management of Indian-Bank was justified in terminating his services and what relief, if any, the workman is entitled to?"

2. Claim statement was filed by the personal driver, namely, Shri Kastoori Lal (since deceased), pleading therein that he was appointed as driver by the bank in August, 1985 at its Safdarjung Development Enclave branch, New Delhi. He was paid a sum of Rs. 800.00 per month as salary. He was assigned car No. DIA 6417 to perform his duties as driver. The said vehicle was registered in the name of the bank. His duties were to drive the car for official purposes, viz.visiting various branches of the bank in Delhi and outside Delhi. A certificate was issued by the bank on 30-5-1987, wherein it has been confirmed that he was in the employment of the bank. He used to maintain log book for the aforesaid vehicle wherein day to day mileage, covered by the vehicle, were recorded. Salary register was maintained, which fact would also confirm that he was an employee of the bank. He was assigned duties of taking the aforesaid car to various service stations. In 1988, salaries of drivers were enhanced from Rs.800.00 to Rs.950.00 a month on the demand of Indian Bank Staff Union. His salary was also accordingly increased. He rendered continuous service for more than 240 days in every calendar year.

3. On 02.10.988, he had fallen ill, pleads the claimant. He was advised bed rest. He recovered from his ailment and went to the bank premises to join his duties on 07.10.1988. The bank refused to take him on duty. His services were discontinued. Provisions of Section 25F of the Industrial Disputes Act, 1947 (in short the Act) were

not complied with, since neither one months' notice or pay in lieu thereof nor retrenchment compensation was given to him. Action of the bank in terminating his services amounts to violation of Article 16 and 23 of Constitution of India. He raised a dispute before the Conciliation Officer seeking his reinstatement in service with continuity and full back wages. Claim has been made that interest on his back wages @ 24% per annum may also be awarded.

4. The bank demurred the claim, pleading that there was no contract of employment between it and the claimant. Dispute raised by the claimant is not an industrial dispute. In fact, the claimant was working as personal driver of Chief Manager, Safdarjung Enclave branch of the bank. He was engaged by the Chief Manager in his personal capacity. He was never borne on rolls of the bank. His salary was never paid by the bank. No appointment letter was issued in his favour by the bank.

5. In March, 1988, the Chief Manager, who had engaged the claimant, was transferred. Claimant requested the new Incumbent also to engage him as his personal driver. The bank, pleads that a car is given to the Chief Manager, with an option to engage driver in his personal capacity Driver, engaged by the Chief Manager in his personal capacity, does not become an employee of the bank. Driver, so engaged, never gets any remuneration from the bank. Log book of his vehicle is maintained to ascertain the distance covered by the vehicle for official purposes and for personal use. Maintenance of log book by a personal driver nowhere makes him an employee of the bank. It is pleaded that since the claimant was a personal driver, provisions of the Act has not come into operation. His claim is misconceived, hence it may be dismissed.

6. Claimant entered the witness box to testify facts in support of his claim. Shri Sunder Lal Goel, unfolded facts on behalf of the bank. No other witness was examined by either of the parties.

7. Arguments were heard at the bar. Shri Pankaj Bagga authorized representative, advanced arguments on behalf of the claimant. Shri Ayush Kumar, authorised representative, presented facts on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

8. Shri Kastoori Lal swears in his affidavit Ex.WW1/A, tendered as evidence, that he was appointed as personal driver in August, 1985 at Safdarjung Enclave branch of the bank at a monthly pay of Rs.800. His salary was paid by the bank on vouchers. Overtime allowance was also calculated and paid to him. The bank was called upon to produce vouchers but it opted to withhold the. same. Vehicle No. DIA 6417 was assigned to him to carry out duties of driver. He used to ferry various officials of the bank for visiting branches within and outside Delhi. He was under control and supervision of the bank. Various slips, which were assigned to him to attend official duties are also filed by him to project that he was an employee of the bank. He used to record log book, wherein it was detailed that he drove the aforesaid vehicle from one destination to another. His wages were not paid to him by the Chief Manager. His salary was fixed by the bank, which was enhanced to Rs.800.00 per month in July, 1988. Deliberately, no appointment letter was issued in his favour by the bank. In March, 1988, new incumbent took over as Chief Manager of Safdarjung Development Enclave branch of the bank. Since he was in continuous service of the bank, hence he used to ferry the new incumbent from his residence to the bank and vice versa, which fact is reflected in the log book. All these facts are sufficient to establish that he was an employee of the bank.

9. Shri Sunder Lal Goel unfolded that the claimant was working as personal driver with him. He was engaged by him in his personal capacity. Car was given by the bank to the Chief Manager but no driver was provided. Chief Manager could engage personal driver in his personal capacity. Maintenance of log book is an internal arrangement to ascertain the distance covered by the vehicle for official purposes and for personal use. He used to pay salary of the claimant out of his own pocket. The bank used to reimburse the amount paid as salary to the claimant. Since claimant was never appointed by the bank, hence there is no question of existence of relationship of employee and employer between the claimant and the bank.

10. When facts unfolded by the claimant and Shri Goel are appreciated it came to light that car No.DIA 6417 was assigned to the claimant to carry out his duties. The said car was registered in the name of the bank. Claimant projects himself to be an employee of the bank, which fact is dispelled by certificate dated 30-5-1987, proved as Ex.MW1/2 by Shri Goel. This certificate is relied by the claimant in his claim statement as well as affidavit, Ex. MW1/1. Contents of the certidicate pins down the claim projected by Shri Kastoori Lal. For sake of convenience, contents of the certificate are reproduced thus:

> "It is certified that Shri Kasturi Lal, is employed as personal driver of official car allotted to our Manager. He is being paid a salary of Rs. 800.00 (Rupees eight hundred only) per month by the Manager, i.e. Rs. 9600.00 (Rupees nine thousand six hundred only) per annum".

11. Status of the claimant as personal driver has emerged over the record through contents of the certificate Ex. MW1/2. This document is a corner stone to the claim projected by Shri Kastoori Lal, since he has also placed reliance on it. Out of the contents of the certificate Ex.MW1/2 and facts unfolded by Shri Sunder Lal Goel, it is apparent that the claimant was engaged as personal driver by

Shri Goel. It was Shri Goel, who used to pay wages to the claimant, out of his own pocket. Claimant was driving vehicle No. DIA 6417. Shri Goel used to get reimbursement of the amount paid to the claimant as his salary.

12. Whether the claimant, who was engaged as personal driver, can claim to be an employee of the bank ? For an answer to this proposition, it is to be appreciated as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

13. Shri Sunder Lal Jain presents in his testimony that initially the claimant was engaged by Shri K.V. Ramanujam as his personal driver. Shri Ramanujam was transferred in March 1988 and in his place he took over as Chief Manager, Safdarjung Enclave branch of the bank. Claimant requested him to engage him as his personal driver, and as such, he was engaged by him also. He used to give his salary out of his own pocket, which was being reimbursed to him by the bank. Though the claimant used to maintain log book, yet it was so maintained to know the distance covered by the vehicle for official as well as personal use. Shri Ramanujam had issued certificate in favour of the claimant wherein his status as personal driver has been projected. Evidence brought over record is suggesting that the claimant was engaged as personal driver of the chief manager of the branch. He was not engaged by the bank at all. With such a proposition, the Apex Court was confronted in Ghulam Dastgir [1978(2) SSC 358]. On consideration of facts, Apex Court ruled that Ghulam Dastgir was not an employee of the bank. Observations made by the Court is extracted thus:

> "the Bank made available certain allowance to facilitate the Area Manager, Shri Sharma privately to engage a driver. Of course, the jeep which he was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid by Shri Sharma as his employer who drew the same granted to him by way of allowance from the Bank. There is nothing on record to make out a nexus between the Bank and the driver. There is nothing on record to indicate that the control and direction of the driver vested in the Bank. After all, the evidence is clearly to the contrary. In the absence of material to make out that the driver was employed by the Bank, was under its direction and control, was paid his salary by the Bank and otherwise was included in the army of employees in the establishment of the Bank, we cannot assume the crucial point which remains to be proved. We must remember that there is no case of camouflage or circumvention of any statute. It is not unusual for public sector industry or a nationalized banking institution to give allowances to its high-level officers leaving it to them to engage the services of drivers or others for fulfilling the needs for which the allowances are meant. In this view, we are clear that the award fails as it is unsupportable. We, therefore, reverse the award".

14. Claimant may seek reliance on a precedent in Ghanshyam [JT 2001 (Suppl.l) SC 229] wherein the Apex Court was concerned with the powers contained in section 17 -B of the Act. It was ruled therein that section 17 -B of the Act does not preclude the High Courts or the Apex Court under articles 226 and 136 of the Constitution from passing appropriate interlocatory orders, having regard to the facts and circumstances of the case. The court may, depending on the facts of a case, direct payment of full wages under section 17-B of the Act only by the employer of the workman. The question whether the workman is entitled to the full wages last drawn or full salary, which he would be entitled to in the event of reinstatement while the award is under challenge in the High Court or Apex Court, depends upon the terms of the orders passed by the court, which has to be determined on the interpretation of the order granting relief.

15. In that matter Ghanshyam was engaged as personal driver by the Regional Manager of the Dena Bank at Lucknow. At the end of tenure of the Regional Manager, services of Ghanshyam were terminated w.e.f. August, 90. He raised an industrial dispute and the industrial adjudicator passed an award holding that Ghanshyam was driver of the bank, termination of his services was uncalled for, hence he was ordered to be reinstated with back wages. The correctness of the award was assailed before the High Court of Judicature at Allahabad. Vide order dated 4-5-2000 High Court directed that Ghanshyam be paid wages in regular pay scale w.e.f. December, 6, 1996, within one month from the date of production of the certified copy of that order, failing which the appellant was directed to appear before the court on 4-7-2001. The said order was under challenge before the Apex Court. The Apex court ruled that by the interim order High Court did not grant relief in terms of section 17-B, nay there is reference to that section in the order. Therefore, question of payment of "full wages last

drawn" to Ghanshyam does not arise. Consequently it is evident that the precedent relied in Ghanshyam would not espouse the case of the claimant.

16. Ghomarbhai Harjibhai Rabari [2005 (2) LLJ 475] presents a situation when a personal driver engaged by an executive of Bank of Baroda was held to be an employee of the bank. In that case, the driver produced three vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. The bank could not rebut those vouchers. Signatures of the driver were also there on the register maintained by the bank. These facts led the Apex Court to conclude that relationship of employer and employee existed between the driver and the bank.

17. Here in the present controversy, claimant could not show that he was ever employed by the bank. He also failed to establish that his wages were paid by the bank. No attendance record or payment vouchers were filed by the claimant to establish that he ever served the bank in the capacity of an employee. Facts of the present controversy make it implicit that the claimant was a personal driver of the Chief Manager. Consequently precedent in Ghulam Dastgir (supra) reules the field as far as facts of the present controversy are concerned. Relying the said precedent and considering the facts of the present controversy, it is concluded that the claimant was an employee of Shri Ramanujam and Shri Sunder Lal. He was never engaged by the bank. Thus, his clear that there existed no relationship of employer and employee between the claimant and the bank. Since there existed no relationship of employer and employee, between the claimant and the bank, termination of is services by Shri Sunder Lal Goel nowhere violates provisions of the Act. It cannot be said that the claimant was an industrial employee and workman within the meaning of clause(s) of section 2 of the Act. It cannot be said that dispensation of his services amount to retrenchment within the meaning of section 2(oo) of the Act. Under these circumstances, provisions of section 25F of the Act nowhere come to the rescue of the claimant. He is not entitled to any relief from the bank.

18. Reasons detailed above make it clear that the demand of the claimant (since deceased) to the effect that he was an employee of Indian Bank is factually incorrect. In such a situation, no occasion ever arose for the bank to terminate service of the claimant. No relief of reinstatement in service can be accorded. Since, provisions of section 25F of the Act has not come into play, claimant is not entitled to any relief. The claim deserves dismissal, being devoid of merits. Resultantly, his claim is discarded. An award, is passed, in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated 22-10-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 29.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. भाटिया शिपिंग प्रा.लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/113 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2012 को प्राप्त हुआ था ।

[सं. एल-31011/10/2005-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 29.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/113 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Bhatia Shipping Pvt. Ltd. and their workman, which was received by the Central Government on 21-11-2012.

[No. L-31011/10/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIA TRIBUNAL NO. 2, MUMBAI

Present : K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/113 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. BHATIA SHIPPING PVT. LTD.

The Managing Director
M/s. Bhatia Shipping Pvt. Ltd.
Shipping House
Kumtha Street
Ballard Estate
Mumbai-400 038.

AND

Their Workmen

The Secretary
Transport & Dock Workers Union
P. D'mello Bhavan
P.D'mello Road
Carnac Bunder
Mumbai -400 038.

APPEARANCES:

For the Employer : Mr. M. B. Anchan &
Mr. T. Vijay Kumar, Advocates.

For the Employer : Mr. A. M. Koyande, Advocate.

Mumbai, dated the 24th September, 2012.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L-31 011/1 0/2005-IR (B-II), dated 11-11-2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of M/s. Bhatia Shipping Pvt. Ltd., Mumbai in dismissing the services of Shri Lalu S. Mulay, Dock Clerk is justified? If not, what relief, Shri Lalu S. Mulay is entitled to?"

2. After receipt of the reference, in response to the notices both the parties appeared in the reference through their respective advocates. The second party union has filed its statement of claim at Ex-7. According to him, he was serving with the first party as a Dock Clerk. The first party suspended him w.e.f. 27-4-2004. He was issued a show cause notice dtd. 2-10-2004. The second party replied the show cause notice. The first party was not satisfied with the reply and they have issued two charge-sheets dated 5-5-2004 & 27-12-2004. The workman replied both the charge-sheets. Separate domestic inquiry was conducted by the first party for each charge sheet. Workman has filed his written statements in both the domestic inquiries.

3. The first charge sheet dt. 5-5-2004 was in respect of unauthorisedly absent for 6 days in April, 2004 and for habitual absenteeism. It is alleged that, he remained absent for 12 days in the year 1999, 19 days in the year 2000, 26 days in the year 2002 and 15 days in 2003. He was also charge-sheeted for slowing down work and for talking to the Managing Director in indecent tune. The workman replied the said charge sheet. According to him he had applied for the leave. The management has issued arbitrary circular in respect of leave. Union has also raised objection for arbitrary implementation of leave rules from time to time. The workman was suspended pending inquiry on false charges leveled against him. Management did not produce any independent witness. No evidence is led for willful slowing down of work. The charges leveled against the workman are not proved. There is no evidence against the second party workman.

4. The second charge sheet dt. 27-12-2004 was in respect of fraud or dishonesty in connection with employer's property and commission of act subversive of discipline or good behaviour in the premises of the establishment. It was alleged that out of the amount of Rs.15000 given to the workman, he had adjusted Rs.1,500 as performance allowance for March and April and Rs.450 as overtime payment. He was also charge- sheeted for not returning the adapter and mobile battery charger of the company which was given to him while he was on duty. According to him, he has not misused the money as has been alleged, whereas the adapter and mobile battery charger were misplaced at the time of repair work of his house undertaken by their Co-operative Society. The workman has assured the concerned to handover the said adapter and battery charger as soon as he would receive the same. Later on he had also handed over the same. With out mobile these articles were not at all useful to him. He has also submitted the details of the amount spent by him. The inquiry officer has not called for the documents as requested by the second party. Harsh punishment has been awarded for the charges of minor misconduct.

5.The inquiry officer has drawn inference and wrongfully held that charges were proved. The management did not produce copy of approved standing orders. The inquiry officer drew inferences that workman was guilty of charge of talking with M.D. Mr. Shailesh Bhatia in indecent tune. There is no evidence to that effect. Workman had applied for privileged leave. He was entitled for the same. The inquiry officer was bias. He has not conducted the inquiry properly and legally. The findings of the inquiry officer are perverse. The punishment of dismissal from service is very harsh. Since the date of suspension, the workman is unemployed. He could not get any job as such he is not gainfully employed anywhere during the period of his suspension and thereafter till this date. Therefore the workman prays that the inquiry report and findings of the inquiry officers be set aside and first party be directed to reinstate him in the service with full back wages and all the consequential benefits.

6. The first party resisted the statement of claim vide its written statement Ex-8. According to them the reference is devoid of merit and not maintainable. According to them the services of workman was terminated after full fledged inquiry. The inquiry was fair and proper. Fair and sufficient opportunity was given to the workman to defend himself. There was no violation of principles of natural justice as has been alleged. The findings of the inquiry officer are not perverse.The punishment awarded is proportionate. According to them while working as a Dock Import Clerk, the workman indulged in various misconducts. But no serious disciplinary action was taken against him. All the workmen were instructed to apply for leave in summer vacation on or before 15-1-2004 for the period April 2004 to June 2004. The workman did not apply for leave before 15-1-2004 whereas the other Dock Clerk, Ram Singh had applied for leave and it was sanctioned by the management. Thereafter on 6-4-2004 workman also applied for leave from 20-4-2004 to 30-4-2004. Since the only other Dock Clerk Mr. Ram Singh was already on leave, the leave application of workman was rejected and he was informed by his superior Shri Gurudatta Rane. Mr. Rane explained to

him the reason for rejecting his leave application. Thereafter on 9-4-2004 ,the workman met Mr. Shailesh Bhatia the MD of the Company in his cabin and questioned him in a very indecent tune that how management can reject his leave. Mr. Shailesh Bhatia tried to pacify him and tried to explain him that company cannot grant leave to both the Dock Clerks (import) and also pointed out the circular dt. 5-1-2004. The workman shouted at Mr. Bhatia in threatening tone and threatened to teach lesson to the management and also told angrily that company may grant or reject his leave, he was not going to attend his duties from 19-4-2004. In the meeting of union representatives and management officials, the workman behaved in adamant manner and again declared that he was not going to attend his duties. Accordingly the workman stopped attending his duties from 19-4-2004 though his leave application was rejected. The workman was in a habit of unauthorisedly remaining absent from duty. They informed the data of unauthorized absence since 1999 till 2003.

7. The workman had also adopted go slow and not completing the given job in the scheduled time.The document of M/s. Finns Frozen was not completed by the workman for four days which was the work of two days. By the go slow work, the workman was guilty for willful insubordination or disobedience of lawful reasonable orders of his superiors. Therefore management issued the charge sheet dt. 5-5-2004 to the workman. The inquiry officer has given sufficient opportunity to the workman to file his reply to cross examine the witnesses. The workman was represented by the union official. Inquiry officer submitted his report dt. 9-4-2005. Copy of the report with show cause notice was sent to the workman.

8. In the meanwhile the workman has committed further misconduct such as fraud and dishonesty in connection with company's money and act of subversive of discipline or good behaviour in the premises of the establishment. He was given some amount by the company to meet the expenses while doing the work of the clients. The workman has not given detailed account of the amount of Rs.15,000 collected from the company in April 2004 and also did not refund the balance amount in spite of repeated requests. He has not refunded the balance amount to the company and said that the amount is adjusted against his alleged batha and allowances etc. He has arbitrarily adjusted the amount against the alleged dues from the company. No such dues were payable to the workman. The workman has also illegally retained the company's property such as LG adapter, LG mobile battery charger. He returned the company's property five months after demand. On these charges second charge sheet 27-12-2004 was issued to the workman. A detailed separate domestic inquiry was conducted in respect of these charges. The inquiry was conducted by impartial inquiry officer. The same union secretary represented the workman as his defence representative. Sufficient opportunity was given to the workman to defend himself in the inquiry proceeding. The inquiry officer submitted his report. Copy thereof was sent to the workman with show cause notice. The workman replied the same. Both the inquiries are fair and proper and sufficient opportunity was given to the workman to defend himself. All the charges were proved and after considering the reply of the workman, the management terminated the services of the workman as he was held guilty for serious misconducts. The punishment is proportionate to his proved misconduct. Therefore management prays that the reference be dismissed with cost.

9. My Ld. Predecessor has framed the issues at Ex-11. Following are the preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
1.	Is inquiry fair and proper	Yes.
2.	Whether the finding are perverse ?	Partly yes

REASONS

Issue no.1:-

10. In respect of the inquiry the Id. adv for the first party pointed out that, the workman has admitted in his cross at Ex-16 that he appeared in the inquiry proceeding with his legal representative. He further admitted in his cross that the inquiry proceeding was explained to him in Marathi before taking his signature on everyday of the proceeding. The workman also admitted that, the copies of the documents which were produced by the management were given to him. He also says in his cross that he has replied the charge sheet. He also admitted that no such complaint was made in the above inquiry. He admitted that Mr. Bhatia the witness of management was offered for cross examination. He also admitted that he also deposed in the inquiry proceeding and he has not produced any other witness in the proceeding. He also admitted that copies of both the reports with findings were supplied to him. The Id. adv for the second party gave much stress that, the first party has not supplied some documents which workman has sought for. He further pointed out that as those documents were in exclusive custody of the first party, copies thereof were not supplied to the workman. These documents were not produced before the I.O. Therefore it is contended that there was violation of the principle of natural justice. The inquiry is not fair and proper.

11. In this respect the Id. adv. for the first party submitted that, whatever documents were relevant were produced in the inquiry proceedings. He further pointed out that the document on which the inquiry officer relied upon were produced in the inquiry proceeding and copies thereof were given to the workmen. In the circumstances the Id. Adv. for the first party rightly submitted that the

documents in respect of some other clients and the work of the second party in respect of some other parties are not relevant. He further submitted that copies of all the documents produced on record and relied by the inquiry officer were supplied to the workman. In the circumstances some other documents which were neither referred nor relied upon by the inquiry officer were not necessary to be produced. In this respect it was argued on behalf of the second party that, with the help of those documents second party could have shown efficiency of his work. It was further submitted that from the delay in respect of one matter, it cannot be said that he had adopted go slow tactics in the work. In this respect I would like to point out that adverse inference can be drawn for non-production of documents by the first party in deciding the said point of go slow work. For non-production of such documents the inquiry cannot be said unfair or improper.

12. In short, the second party workman was served with both the charge sheets. He filed his replies to both the charge- sheets. He was represented by the defence representative of his choice. Both the charge sheets and the day to day proceedings were explained to him in Marathi. He was given the opportunity to cross- examine the witness of the first party. He was also given an opportunity to examine himself and his witness if any. After completion of both the inquiries, the workman was served with the inquiry reports and findings of the Inquiry Officer with show - cause notices. The workman submitted his replies and after considering his replies the orders of punishment was served on him. In this backdrop it cannot be said that there was violation of principles of natural justice as management has not produced some documents sought by the second party. These documents were neither referred nor relied upon by either of the parties, so also by the inquiry officer. Such documents are totally irrelevant so far as both the inquiries are concerned. Therefore non production of such documents does not amount to violation of principles of natural justice. In short, conclusion can be arrived at that the inquiry was fair and proper. Accordingly I decide this issue no.1 in the affirmative.

Issue no. 2:-

13. In this respect the Ld. Adv. for the second party submitted that, as workman has questioned the circular dt. 5-1-2004 issued by the management, in respect of leave, by saying that it was against the earlier settlement and has questioned the management for rejecting his leave application on that count and also as he was taking active part in the activities of the union, the management got annoyed and got concocted all these charges against the workman. In this backdrop the Ld. Adv. pointed out that, the management has falsely charged the workman even for delay in handing over adapter and the mobile charger which was totally useless without mobile phone. Furthermore these articles are neither valuable nor having any significant importance to retain them. Therefore Ld. Adv. urged, to look in to the matter from the angle that, the workman is being victimized for questioning the management as the union activist. No doubt all the aspects are required to be taken into account while examining the matter on merit. At first I would like to examine finding in respect of charge of habitual absenteeism.

14. In the inquiry proceeding Ex-45, page 31 after the medical certificate was shown to the management witness Shri S. L. Bhatia, he admitted in his cross in reply to question No. 32 that prima facie it shows that the workman was ill for the same period (i.e. period from 22-11-1999 to 26-11-1999). The inquiry officer has also observed in his report at Ex-50 that it prima facie appear that the workman was ill for the period 22-11-1999 to 26-11-1999. He has also produced medical certificate of his illness. In respect of alleged absentee of the year 2000, the inquiry officer has also observed in his report at Ex-50 that the workman was ill from 24th to 29th April 2000 and the leave was on account of sickness. It is also observed in the inquiry report that the workman had applied for two days sick leave on 28-8-2000 to 29-8-2000. In the inquiry report it is further observed by the inquiry officer that the witness has signed these applications in the capacity of sanctioning authority. The inquiry officer expressed doubt as there is some overwriting. However it has not come on record that the overwriting is subsequent or made by the workman. Had it been a mischief by the workman, the management would have taken action against the workman immediately. They would not have kept quiet for all these years. The documents were in possession of the first party and question of tampering with the document by the workman, do not arise. In short from the evidence and circumstances on record, it is revealed that the workman had sought for sick leave in the year 1999 and in the year 2000 and he was not unauthorisedly absent. .He has also produced medical certificate from registered medical practitioner.

15. In respect of absence of workman, in the year 2002 the fact is admitted that he was sanctioned sick leave from 28-1-2002 till 6-2-2002. However workman did not appear on 7-2-2002 till 22-2-2002 and he was marked unauthorisedly absent for 16 days and his leave application dt. 25-2-2002 with medical certificate was rejected as there was no address of doctor who has issued the medical certificate and the medical certificate was found doubtful. Therefore management sanctioned only 8 days sick leave and rest of the leave was without pay. In this respect Ld. Adv. for the workman submitted that the workman was already on sick leave. After completion of his sick leave he was sanctioned 8 days sick leave and rest of the days leave was treated as without pay leave. In this respect Ld. Adv. for the workman pointed out that in the inquiry proceeding Ex-45, before inquiry officer, management witness Mr. Bhatia, while answering question No. 48 has stated that, instead of going into the details and verifying the authenticity of the subject, certificate prima facie was doubtful and the management sanctioned 8 days sick leave which was equivalent to sick leave balance of the workman. He has also not denied the suggestion that, there was 96 days privileged leave at the credit of the workman. The Ld.

Adv. for the workman, therefore, rightly submitted that instead of without pay, the management could have granted privileged leave or any other leave at the credit of the workman. The Ld. Adv. further pointed out that leave without pay amounts to penalty and according to the management witness, merely on prima facie doubt in respect of medical certificate, they have rejected the medical leave application of the workman and it was treated as leave without pay. The Ld. Adv. thus submitted that, the absentee in the year 2002 also can not be taken in to account for the charge of habitual absenteeism as medical leave was rejected wrongly. Furthermore, the workman was already and unnecessarily punished by treating it leave without pay.

16. In short the findings of absence for the year 1999 to 2002 as discussed, herein above that, the workman had filed application on the ground of illness with medical certificates. In-spite of that those applications were rejected and in some cases the leave was treated without pay and in some cases the workman was shown absent from-duty. When the workman has produced medical certificate, the sick leave ought to have been granted to him. Instead of that he was not only marked absent but charge of absenteeism was also kept on the workman. It is un just and improper. In this respect Apex Court ruling can be resorted to in New India Assurance Co. Ltd. V/s. Vipin Biharilal Srivastava 2008 LLR 440 (S.C). wherein the Hon'ble Apex Court in respect if sick leave observed that,

> "...Sick leave can be granted to an employee only on production of a medical certificate from a registered medical practitioner"

In the case at hand, medical certificates were produced from a registered medical practitioner sick leave could have been granted to the workman.There was no charge against the workman for producing false or bogus medical certificate as such. His applications for sick leave were wrongly rejected. Therefore the absence for the above referred period i.e. from 1999 to 2002 was on the ground of sickness, thus cannot be considered herein for the purpose of habitual absenteeism. In short the inquiry officer was wrong in recording the finding that, the workman is guilty for habitual absenteeism for the period from 1999 to 2002 as it not based on the sound reasons.

17. In respect of findings of the Inquiry Officer the Ld. Adv for the first party submitted that the Tribunal does not sit in appeal over the findings of the inquiry officer. Therefore such findings of I.O. cannot be said or declared perverse. In support of his argument the Ld. Adv for the first party resorted to Apex Court ruling in US State Road Transport Corporation & Ors V/s. Musais Ram & Ors. 1999 (83) FLR 226 (SC) wherein on the point Hon'ble Court observed that;

> "The Court does not sit in appeal over the findings of the I.O. If the findings are based on uncontroverted material placed before the I.O., it cannot be said that these findings are perverse."

In the case at hand the inquiry officer did not consider the fact that the applications of the workman were filed along-with medical certificates from registered medical practitioners. In-spite of that, instead of granting sick or any other leave, his sick leave applications were rejected and he was marked absent. In the circumstances the findings of IO cannot be said based on uncontroverted material placed before him as has been observed in the above Apex court ruling. Therefore the ratio laid down in the above ruling is not attracted to the case in hand. Thus findings of Inquiry Officer in respect of the charge of absenteeism for the period from 1999 to 2002 are found to be perverse.

18. In the same charge sheet dated 5-5-2004 the workman was charge-sheeted for 15 days absence in the year 2003. In this respect from the record produced in the inquiry proceedings it is revealed that, on each occasion, the workman had applied for leave and it was not sanctioned for the reasons mentioned in the order on the applications. Some times the leave was not possible due to March ending, some times application was. rejected due to pressure of work and lastly his application was rejected as workman had already availed the leave fixed for the period. As the leave applications of the workman were rejected, he was marked absent from duty. The Ld. Adv. for the workman in this respect submitted that though , the workman was shown absent, the workman had applied and his application was rejected. He further submitted that, in the circumstances though workman was marked absent, he ought not to have been charge-sheeted as he had applied for leave and there was leave balance in his account. In this respect I would like to point out that, though leave was balance, in his account, an employee cannot claim the leave as a matter of right. Genuineness of his need and whether he remained absent without application or otherwise can be examined while awarding the punishment. Therefore the finding of the Inquiry Officer in respect of absence of the workman, for 15 days in the year 2003 is found to be just and proper and the same cannot be called perverse.

19. In respect of the last incident of absence, it is a fact that the workman had applied for leave by his application dt. 6-4-2004, from 20-4-2004 to 30-4-2004. It is the case of the first party that by circular dt. 5-1-2004 all the employees were informed and instructed to apply for leave on or before 15-1-2004 for the leave from April to June. Accordingly the other Dock Clerk, Mr. Ram Singh had already applied for leave and his leave was granted for the month of April. Therefore the management has rejected the leave application of the workman. In this respect according to the workman as he had to attend the marriage of his close relative, therefore he applied for 10 days leave. However as the management has refused to grant his

application, he curtailed the period and availed the leave from 22-4-2004 to 27-4-2004.

20. In respect of absence for the period of 22-4-2004 to 27-4-2004 it is submitted on behalf of the workman that as per the earlier settlement/agreement, workman was supposed to file application for leave, 15 days prior to the date of proceeding on leave. It is further submitted that, in case of emergency the said period of 15 days can be curtailed. The Ld. Adv for the workman submitted that, M.D., Mr. Bhatia has admitted in his cross in the inquiry proceeding in reply to question no.3 that, though they are not direct signatory to the settlement, they are following the same in principle. In reply to question no. 6 he further admitted that, the employee has to apply for privileged leave at least 15 days before the date of leave and management shall inform the workman in writing about the sanction or otherwise of the leave. In reply to question no. 7 in the inquiry proceeding Ex-45, witness Mr. Bhatia also admitted that, as per clause 'C' and proviso thereto in emergency cases the conditions mentioned in (C/3) may be relaxed. In the light of these replies in the inquiry proceeding Ex-45, the Ld. Adv for the workman submitted that, the rejection of privileged leave on the ground that application was not given before 15-1-2004 for the leave from 20-4-2004 is arbitrary act on the part of the management. The Ld. Adv. thus submitted that, the management cannot issue such arbitrary circulars and direct the workmen to give applications for leave some 3/4 months prior to the date of availing of the incidental leave. The Ld. Adv. for the workman further submitted that the management has issued the said circular contrary to the earlier settlement and the usual procedure was required to be followed for filing the application for leave. The Ld. Adv. for the workman further submitted that the workman wanted to attend the marriage of his close relative. Therefore by way of emergency the workman has given application on 6-4-2004. It was given 14 days in advance from the proposed date of proceeding on leave. In the circumstances by way of emergency management ought to have granted his leave. He further submitted that, though they have rejected his leave on the administrative ground, they should not have charge-sheeted the employee for the same. I found substance in the argument of the Ld. Adv. However as has been observed above, an employee cannot claim leave as a matter or right. The above circumstances of rejecting his leave application on the basis of arbitrary circular can be taken into account while deciding the point of proportionate punishment. In this backdrop, I come to the conclusion that the findings of inquiry officer in respect of unauthorized absence of the workman for 6 days in the year 2004 is found to be just and proper and cannot be called perverse.

21. Another charge in this charge-sheet dated 5-5-2004 is of willfully slowing down work by the workman. It is alleged that the documents and papers of M/s. Finns Frozen Foods Ltd. were given to the workman and he got the work done in four days instead of two days. This solitary incidence that instead of two days it required four days to get the documents cleared-from the customs authority is not sufficient to arrive at the conclusion that, the workman has adopted slowing down work policy. There is no other incident or allegation in respect of slowing down the work. In this respect further I would like to point out that the papers are to be cleared by the customs officials and workman was supposed to submit these papers to officer concern. Therefore it appears improper to hold the workman guilty for the charge of slowing down the work from the only incident that the work of the aforesaid company was completed in four days instead of two days. This finding of Inquiry Officer is also not based on uncontroverted material placed before him. Therefore, I hold that this finding of inquiry officer is found to be perverse.

22. Another charge leveled against the workman is willful insubordination or disobedience of lawful and reasonable order of superior. In this respect it is alleged that the workman talked on phone to MD Mr. Bhatia in indecent manner and banged the phone. It is alleged that he questioned Mr. Bhatia as to how his leave application dt. 6-4-2004 was rejected and it is alleged that he further said that, they may grant or reject his leave application, he would not attend the work from 20-4-2004 and banged the phone down. The inquiry officer held this charge is proved as it is not denied by the workman in his written statement. In short the inquiry officer held this charge is proved as ,it is not specifically denied. The inquiry officer seems to have followed the principle under O. 8 Rule 5 of Code of Civil Procedure which lays down the principle that, the fact alleged in the pleading if not denied specifically, it amounts to admission. This principle in Code of Civil Procedure in my opinion would not be attracted in criminal proceedings and departmental inquiry as well. Therefore I hold that the finding of the inquiry officer in respect of this charge is perverse as he recorded the finding without any evidence. His finding is based on the above referred principle of CPC which cannot be followed in the departmental inquiry. In short there is no evidence of disorderly or indecent behaviour and commission of acts subversive of discipline and good behaviour in the undertaking. The findings of inquiry officer in respect of willful insubordination, willful slowing down work, and act of subversive of discipline, disorderly and indecent I behaviour so also habitual absenteeism are not based on uncontroverted facts on record. Therefore I hold that findings of the inquiry officer in respect of these charges are perverse. I found the findings of the inquiry officer in respect of unauthorized absence for 15 days in the year 2003 and unauthorized absence for 6 days in April 2004 are just and proper.

23. In respect of second inquiry, the inquiry officer held that charges of fraud or dishonesty in connection

with the employer's property and commission of act subversive of discipline or good behaviour in the premises of establishment are held to have been proved. In this respect I would like to point out that the two charges were framed against the second party workman. First is that, after suspension the workman was asked to return his mobile phone, adapter, LG mobile head phone, mobile charger, and user manual. It is alleged that he returned mobile phone. However he did not return the mobile head phone, adapter, mobile charger and user manual and used the company's property for more than five months. In this respect the workman has given explanation that, he returned the mobile phone of the company immediately. However the adapter, battery charger, headphone and user manual were misplaced as his house was under repair undertaken by the society and he, returned these articles immediately after they were traced out. In this respect the Ld. Adv. for the workman submitted that adapter, mobile charger, head set and user manual are not at all useful when the mobile handset was returned by the workman to the company. He further pointed out that the above referred articles are generally kept at home and during shifting of the luggage for the purpose of repair these articles were misplaced for few months. In this respect the Ld. Adv. for the first party submitted that, though workman has returned the LG mobile phone, he may have used these articles for another mobile phone of his own. In this respect it was rightly pointed out by the Ld. Adv. for the second party that these articles cannot be used without mobile phone. He further pointed out that, if workman had another mobile phone it must been accompained with adapter, mobile charger and used manual which are invariably supplied with every mobile phone. They are not to be required to be purchased separately. In this backdrop this charge is found ridiculous that the workman has unauthorisedly used the company property for more than five months. The explanation of the workman was quite just and proper and ought to have accepted by the company and the inquiry officer as well, especially when these articles are totally useless without a mobile phone of the same company and every mobile phone is sold with all these accessories. Thus I hold that the finding of the inquiry officer in respect of fraud or dishonesty in connection with employer's property is perverse as it is not based on uncontroverted facts on record.

24. The other charge leveled in this second charge-sheet is that, an amount of Rs.15,000 was given to the workman for expenses of the company. It is alleged that he has submitted false account and shown to have taken an amount of Rs.1,500 as performance allowance/battha for the month of March and April 2004 and has shown Rs.450 as overtime allowance and arbitrarily withdrawn the same amount from the payment/advance given to him. In this respect the Ld. Adv. for the workman submitted that as against the advance of Rs.15,000 the workman had spent total amount of Rs.17,225. The workman has spent Rs. 2,225 from his own pocket. The workman has shown Rs.1950 towards his battha (Rs.1500 + Rs. 450) this amount was less than Rs.2,225. The Ld. Adv. further pointed out that, the. workman was suspended thereafter he submitted the account. Therefore he has adjusted the amount of Rs.1500 towards performance allowance/battha of two months and Rs.450 towards overtime. The Ld. Adv. submitted that the statement of account is at Ex-39. It clearly shows that, workman has spent excess amount than the amount of advance of Rs.15,000. Therefore question of appropriation of amount of company of Rs.1,950 by the workman does not arise. The finding of the inquiry officer in respect of this charge is also found to be perverse as finding is not based on uncontroverted facts on record. It supports the version of the workman that, the management is trying to victimize him as he has challenged the arbitrary circular of the company directing to give leave application about four months prior to date of proceeding on leave, which was contrary to the terms of the settlement. Both these charges seem to have been unnecessarily leveled against the workman merely to put pressure on him. In this backdrop I come to the conclusion that, the charges in the second charge sheet does not stand to reasons and the findings of the inquiry officer that the workman was found guilty for the charge of fraud or dishonesty in connection with the employer's property and commission of act subversive of discipline or good behaviour in the premises of establishment are found to be perverse.

25. In the light of above discussions I come to the conclusion that the findings of the inquiry officer in respect of charge of unauthorized absence for 15 days in the year 2003 and charge of unauthorized absence for 6 days in the year 2004 are not perverse. I found the rest of the findings of the inquiry officer in respect of the other charges are found to be perverse. Accordingly I decide this issue no.2 partly in the affirmative and proceed to pass the following order :

ORDER

(i) The domestic inquiry held against the workman is fair and proper.

(ii) The charges of unauthorised absence for 15 days in the year 2003 and 6 days in the year 2004 are found to be proved against the workman and the finding of the I.O. to that effect is just and proper.

(iii) The findings of other charges of inquiry, officer are found to be perverse.

(iv) Parties are called upon to argue /read evidence on the point of punishment on the next date i.e. 13-12-2012.

Date: 24-9-2012

K. B. KATAKE, Presiding Officer

476△ GI/12-20

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 30.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 160/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/165/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 30.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref.No. 160/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 23-11-2012.

[No. L-12012/165/2003-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No. 160/2011

Shri Devender Kumar
S/o Sh.Mahipal Singh,
R/o Kadkad Duma C/o Suresh Pal,
Gali No.1, 216, Shadhara,
Delhi.

....Workman

Versus

The Dy. General Manager,
Syndicate Bank,
Zonal Office Meerut Wing
University Road,
IR Cell Bhiwani Puram,
Meerut (U.P.).

....Management

AWARD

A part time sweeper employed at Baraut branch of Syndicate Bank (hereinafter referred to as the bank) was in the habit of absenting himself from duties in unauthorized manner. He remained absent for a period of 101 days in an unauthorized manner and was granted extra ordinary leave on loss of pay for 59 days, as on 14-5-2002. Letters were written calling upon him to join his duties which proved to be futile. He joined duties at his whims on 15-5-2002 and submitted an application for grant of medical leave, which application did not find favours with the bank. He again absented in an unauthorized manner w.e.f. 2-7-2002. A charge-sheet was served upon him. He opted not to reply the charge-sheet. The bank constituted a domestic inquiry. Enquiry Officer submitted report against him. Concurring with the findings of the Enquiry Officer, the Disciplinary Authority awarded punishment of compulsory retirement from service with superannuation benefit, vide order dated 6-3-2002. Feeling aggrieved, he raised an industrial dispute. Since the bank contested his claim, conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-12012/165/2003-IR (B-II), New Delhi dated 12-12-2003, with following terms:-

> "Whether action of the management of Syndicate Bank in giving compulsory retirement to Shri Devender Kumar son of Mahipal Singh, Part Time Sweeper w.e.f. 6-3-2003 is just fair and legal ? If not, what relief he is entitled to".

2. Claim statement was filed by the part time sweeper, namely, Devender Kumar pleading therein that he was working with the bank since 1-6-1988 against a regular post. His work was satisfactory and he never gave a chance of complaint to his superiors. On 2-7-2002 he fell ill. He informed his officers about his ailment. He enclosed his medical and fitness certificate when he submitted his joining report to the bank. He was told that his services were dispensed with vide order dated 6-3-2003.

The claimant presents that neither a charge-sheet was served upon him nor he was called to join enquiry proceedings. His services have been dispensed with in violation of principles of natural justice and fundamental rights. He rendered continuous service with the bank for more than 240 days in a calendar year and as such was entitled to protection of Section 25F of the Industrial Disputes Act, 1947 (in short the Act). Neither notice nor pay in lieu thereof and retrenchment compensation was given to him. His services were terminated in violation of the provision of Section 25-G of the Act. He claims that he may be re-instated in service with continuity and full back wages. He may also be awarded a sum of Rs.5,000.00 as cost of litigation, pleads the claimant.

4. Claim was resisted by the bank pleading that it was premature. The claimant opted not to prefer an appeal against the order of the Disciplinary Authority. He straight away approached the Conciliation Officer and as such the proceedings are premature. The bank projects that the claimant was working as a part time sweeper at its Baraut

branch of the bank since 1-6-1998. He was in the habit of remaining absent from duty in unauthorized manner. His service record projects that he remained absent in unauthorised manner for 101 days and availed extra-ordinary leave on loss of pay for 59 days as on 14-5-2002. Thus he remained absent for 160 days on loss of pay within a period of 4 years. He was informed vide letters dated 13-11-2001, 30-1-2002 and 12-4-2002 that his absence has been treated as unauthorized. He submitted a leave application on 15-5-2002 along with a medical certificate. Since the application was in contravention of rules, it was not considered by the Competent Authority. He again absented from his duties without any intimation with effect from 2-7-2002. Charge-sheet dated 16-7-2002 was served upon him. He did not submit any reply, hence domestic enquiry was constituted. The Enquiry Officer sent notice to the claimant by registered post which was received back un-delivered with the remarks "addressee has gone somewhere out and his address is not known". Letters were sent on last known address of the claimant. His family members were not aware of his whereabouts. The above report makes it clear that the claimant is deemed to have been served with the communication sent by the Enquiry Officer. The Enquiry Officer was constrained to proceed him ex-parte. He conducted the enquiry and submitted his report to the Disciplinary Authority. The Disciplinary Authority concurred with the findings of the Enquiry Officer and proposed punishment of compulsory retirement for the claimant. He sent communication to the claimant, fixing date of personal hearing for 5-3-2002. The said communication was received back un-delivered with the remarks "refused to accept." Consequently punishment of compulsory retirement from service with superannuation benefits was awarded to the claimant vide order dated 6-3-2003. The claimant came in the branch on 17-4-2003 and was informed about punishment order. It has been denied that claimant was having no knowledge of punishment order passed against him. The bank pleads that provisions of Section 25 F, 25 G and, 25 H of the Act are not applicable. The claimant is not entitled to any relief. His claim may be dismissed being devoid of merits, pleads the bank.

5. On pleadings of the parties the following issues were framed by my Ld. Predecessor:-

1. Whether the enquiry conducted by the Management against the claimant was fair and proper? If not, its effects?
2. Whether the case /claim of the workman is pre-mature.
3. As in terms of reference.

6. Vide order No.Z-22019/6/2007 -IR (C-II), New Delhi dated 11-2-2008 the case was transferred by the appropriate Government to Industrial Tribunal-II, New Delhi for adjudication. It was re-transferred to this Tribunal vide order No.Z-22019/6/2007-IR (C-II), New Delhi dated 30-3-2011 for disposal.

7. Issue No.1 was treated as preliminary issue.

8. On consideration of facts, unfolded by the claimant, Shri A.K. Tyal and Shri Prem Raj, Chief Manager of the bank, the preliminary issue was answered in favour of the bank and against the claimant, vide order dated 24-6-2011.

9. Arguments were heard at the bar. The claimant filed written arguments. Shri Rajesh Mahindru, authorized representative, advanced arguments on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on the issues involved in the controversy are as follows:-

Issue No. 2

10. As projected by the bank claimant opted not to prefer an appeal against the order of punishment dated 6.-3-2002. The bank asserts that a right of appeal, available to the claimant under conditions of his service, was not availed. The claimant approached the Conciliation Officer straight away. The claim is pre-mature, argues Shri Mahendra.

11. The Act defines "industrial dispute" as any dispute or differences between employers and employers or employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the condition of a labour of any person. Scheme of the Act makes it implicit that a dispute in which the workmen as a class are concerned is an industrial dispute. However, by way of legal fiction indicated by section 2A of the Act an individual dispute arising out of discharge, dismissal, retrenchment or otherwise termination of service of an individual workman have been brought with in the ambit of industrial dispute. Therefore, it is evident that the dispute relating to termination of service of the claimant is an industrial dispute.

12. For an existing or apprehended industrial dispute the appropriate Government has to form an opinion relating to its existence or apprehension and to record its satisfaction that such a dispute is to be referred for adjudication to the Tribunal, as contemplated by section 10(1)(d) of the Act. It is not provided therein that before raising such a dispute, a terminated employee has to exhaust all channels available to him under recruitment and disciplinary rules. No obligation is cast on the appropriate Government to satisfy itself that a workman has exhausted remedies available to him under service rules applicable to his case. Therefore, it is evident that no such impediment is there which may frustrate the case of the claimant: Consequently, the issue is answered in favour of the claimant and against the bank.

Issue No. 3

13. Chargesheet Ex. MW-1/1 projects that the claimant remained absent in an unauthorized manner for 57 days as on 14-5-2002. Letters dated 13-11-2001, 30-1-2002 and 12-4-2002 were written to him, calling upon him to join his duties but to no avail. Since he remained absent unauthorisedly without intimation for a period exceeding 30 days, he committed an act of misconduct. As projected above an enquiry was constituted and Enquiry Officer recorded findings which are reproduced thus:—

> "I have carefully gone through all the evidence produced before me during the departmental enquiry and after careful analysis of the same I arrive on the conclusion that the charges for having committed gross miscondut of "remaining unauthorisedly absent without intimation continuously for period exceeding 30 days as per clause 19.5(p) of Bipartite Settlement and Minor misconduct of irregular attendance vide clause No.19.7(b) of Bipartite Settlement levelled against Shri Devendra Kumar, employee No. 502865, Part Time Sweeper vide chargesheet No. ZOL-M/IRC/CGS (W)-16/202 dated 16-7-2002 stand established and proved in total in departmental enquiry".

On consideration of the report of the Enquiry Officer, the Disciplinary Authority awarded punishment of compulsory retirement from service with superannuation benefits to the claimant, vide order dated 6-3-2003.

14. Sixth Bipartite Settlement dated 14-2-1995 coins remaining unauthorized absence without intimation continuously for a period exceeding 30 days as gross misconduct. Thus it is evident that the claimant committed gross- misconduct. As projected above he remained absent in unauthorized manner without any intimation exceeding a period of 30 days, for which he was charge-sheeted. The claimant also remained absent for a considerable long period, prior to the period detailed in the charge-sheet. Question for consideration would be as to what punishment would be appropriate to such misconduct ? An employee is under an obligation not to absent himself from work place without good cause. Absence without leave is misconduct in industrial employment warranting disciplinary punishment. Habitual absence from duty without leave has also been made misconduct under model standing orders framed under Industrial Employment, (Standing Orders) Act, 1946. When an employee absents himself, he must have applied and obtained leave from his employer. No employee can claim leave of absence as a matter of right and remaining absent duty without leave will constitute violation of discipline. Quantum of punishment for such case would depend upon facts of each case. In order to justify extreme punishment of discharge or dismissal it is to be proved that the employee remained absent without leave for inordinate long period or has habituated himself from duty. Here in the case the bank has been able to project that the claimant remained absent without leave for an inordinate long period besides being habituated to absence from duty. His removal from service with benefits of superannuation is justified and on account of his inordinate long absence without leave.

15. Though section 11A of the Act empowers the Tribunal to set aside order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including award of any lesser punishment in lieu of discharge or dismissal as circumstances of the case may require, yet I do not find it to be a case for intervention. For grant of such a relief the Tribunal has to trace out the circumstances which may project compulsory retirement of the claimant to be unjustified. When case was scanned with this objective nothing came over the record to raise' even an whisper of fact to the effect that the action of the bank was unwarranted or it was an act of victimization or unfair labour practice. At different intervals the claimant absents himself in unauthorized manner even after 14-5-2002. Therefore, it is crystal clear that the clamant was never serious towards his duties and absented himself in an unauthorized manner without any justification. Such an employee has no right to remain in service. Therefore, it is concluded that punishment awarded to the claimant is not to be interfered with. Action of the bank is held to be legal, fair and justified. As such the claimant is not entitled to any relief. His claim is, accordingly, dismissed. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated: 17-10-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 31.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 52/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/33/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 31.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 52/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their

workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/33/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present :

SHRI S. N. NAVALGUND, Presiding Officer

Dated the 9th day of October, 2012

INDUSTRIAL DISPUTE No. 52/2006

Between:

Sri P. Srinivasa Rao,
S/o P. Venkata Swamy,
D.No.12-7-128,
Ganesh Rao Street,
Guntur City, Guntur

....Petitioner

AND

The Regional Manager,
Central Bank of India,
Regional Office, P.B. No.727,
Benz Circle, Bunder Road,
Vijayawada

....Respondent

Apearances :

For the Petitioner : Sri Ch. Indrasena Reddy, Advocate

For the Respondent : M/s. Ch. Siva Reddy & T. G. Prasad Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/33/2006-IR(B-II) dated 29-8-2006 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Central Bank of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Central Bank of India in terminating the services of Sh. P. Srinivasa Rao, Part-time Safai Karamchari is justified and legal ? If not, what relief the disputant is entitled to ?"

After receipt of the reference, it was registered in this Tribunal as I.D. No. 52/2006 and notices were issued to both the parties.

2. Both the parties have appeared through their respective counsels. Petitioner has filed claim statement on 11-2-2006 and Respondent filed counter statement on 6.8.2002. Petitioner filed his affidavit in lieu of examination in chief and cross-examined by Respondent's counsel. Thereafter Respondent filed the affidavit of Sri P. Sesha Rao as MW1 and when the matter was reserved for cross examination of MW1, the learned counsel appearing for the Petitioner filed a memo dated 4-9-2012 to dismiss the case as withdrawn. On 9-10-2012 Sri Vikas Sharma, advocate for Petitioner submitted that the matter may be closed as withdrawn as per the memo filed under the signeature of Petitioner and his counsel dated 4-9-2012. Accordingly, as per the memo filed on 4-9-2012, the reference has been rejected as withdrawn.

3. In the memo dated 4-9-2012 it is stated that in pursuance to the circular No. CO-HRD REP:SS.SK: 2012-13:253 dated 14-8-2012 issued by the central office of the Respondent bank he is entitled for the post of. Full Time Safai Karmachari-cum-sub-staff and/or sub-staff and to get the said past on the basis of earlier seniority and length of service he has to withdraw this case as per clause 3(f) of the said circular. Having regard to the memo dated 4-9-2012, the reference is rejected as withdrawn. Accordingly, a 'Nil Award' is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 9th day of October, 2012.

S. N. NAVALGUND, Presiding Officer

Appendix of Evidence

Witnesses examined for the Petitioner

WW1 : Sri P. Srinivasa Rao

Witnesses examined for the Respondent

MW1 : Sri P. Sesha Rao

Documents marked for the Petitioner

Ex. W1: Copy of circular No. 42 VRO-PRS 98-99 dt. 2-1-99

Ex. W2: Copy of Material answer papers to the circular 42 submitted by the B.M., Central Bank, Laxmipuram, Guntur dt. 4-1-99

Ex. W3: Copy of circular No.VRO-PRS 1999-2000 interview letter dt.18-12-99

Ex. W4: Copy of leeter No.VRO-PRS 01/02/2716 dt. 6-3-2000 by Regional Office, Vijayawada and selection list of PTSK Vijayawada Regional Office and common merit list.

Ex. W5: Copy of bunch TT Discount cash receipts containing 27 pages.

Ex. W6: Copy of bunch of challans of TT Discount receipts containing 120 pages.

Documents marked for the Respondent

NIL

4760 GI/12-21

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 32.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोचिन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 37/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-12-2012 को प्राप्त हुआ था।

[सं. एल-35011/1/2009-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 32.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2009) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Cochin Port Trust and their workman, which was received by the Central Government on 3-12-2012.

[No. L-35011/1/2009-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: SHRI. D.SREEVALLABHAN, B.SC., LL.B., Presiding Officer

(Thursday the 15th day of November, 2012/24th Karthikam, 1934)

I. D. 37/2009

Unions : 1. The General Secretary,
Cochin Port Staff Association,
Willington Island,
Cochin - 9, Cochin.
By Adv. Shri A.V.Xavier.

2. The General Secretary,
Cochin Port Employees
Organisation, Willington Island,
Cochin - 9, Cochin.
By Adv. Shri T.A.Shaji.

Management : The Chairman,
Cochin Port Trust,
Willington Island,
Cochin - 9, Cochin.
By M/s. Menon & Pai

This case coming up for final hearing on 30-10-2012 and this Tribunal-cum-Labour Court on 15-11-2012 passed the following :—

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Government of India, Ministry of Labour by Order No. L-35011/ 1/2009-IR(B-II) dated 12-10-2009 referred the following industrial dispute to this tribunal for adjudication :

> "Whether the demand of Cochin Port Staff Association and Cochin Port Employees Organisation to regularize the contract workmen employed by the Cochin Port Trust for years together is legal and justified? What relief the workmen concerned are entitled to ?"

2. The demand of the two unions, the Cochin Port Staff Association and the Cochin Port Employees Organisation, for regularisation of the employees engaged on contractual basis was not acceded to by the management, the Cochin Port Trust, and the same has resulted in this reference.

3. Unions 1 and 2 filed separate claim statement. The allegations made in support of the claim for regularisation in the claim statements are of similar nature. Those allegations, in a nutshell, are that 273 employees had been engaged in the vacancies of regular posts arose due to retirements, VRS and rolling back of the retirement age from 60 to 58 years and kept unfilled under the pretext of the ban of direct recruitment imposed by the Ministry of Shipping. They were appointed directly by the management through appointment orders and after observing all the recruitment formalities and procedures. They have been discharging the same duties and responsibilities as assigned to the permanent port employees. The day-to-day operations in many of the vital sections in the port are being carried out with the service of those workers. They have put in 3 to 15 years of service in various categories of posts in the Cochin Port Trust. Their services are inevitable to carry out the port operations smoothly. They are similarly qualified and skilled as compared with the permanent employees and they are doing the same work. They are engaged on part-time, full-time, daily rated, monthly basis and in the name of certain pools. But they are denied of the wages and other benefits enjoyed by the permanent employees. They are not provided with the benefits of HRA, Port City Allowance, Medical Facility, PF, Leave, Weekly Rest Day, Uniform, Washing Allowance and overtime wages. There exists sheer discrimination in Cochin Port in determining the status of employment of those employees as they are arbitrarily deprived of the basic service conditions and benefits prevailing in Cochin Port Trust. They are being severely exploited and the management has adapted such an unfair labour practice for years together for their undue advantage which is detrimental to the interest of those employees. They

belong to two categories. One is the dependents of the deceased/invalidated employees who are eligible for regular appointment on compassionate grounds. The other is the technically qualified persons appointed by the Port Trust from outside for meeting the operational requirements. As on September 2007 there were about 110 posts lying vacant in class 3 and 4 categories in Cochin Port Trust and due to acute shortage of employees in the entry level, many departments were confronting with untold difficulties in carrying out the basic functions in each section. Even then the management was engaging the workers on contract basis, though contract employment is prohibited as per Section 10 (1) of the Contract Labour (Regulation and Abolition) Act of 1970. Considering the continuous demands made by the Trade Unions for their regularisation the Port Trust Board vide Resolution No.61 dated 01-11-2002 had resolved to fill up 200 essential vacancies absorbing 200 workers out of the 242 workers engaged on contract basis at that time. The decision has not still been implemented by the Port Trust stating that it was not ratified by the Government. It does not require any sanction from the Government as the Port Trust Board is an empowered body as per the provisions of the MPT Act 1963 to take decision to ensure the smooth functioning of the Port. The matters pertaining to general policy alone requires the approval of the Government. The said Act provides autonomy of administration to the Port Trust and the Port Trust Board is empowered to take appropriate decision for the regularisation of those contract employees and also to improve their service conditions. Sections 27 and 28 of the said Act invest the powers to the Port Trust Board to create posts and for making regulations in matters of appointment, promotion, suspension, removal and dismissal, terms and service conditions etc. of its employees. The regularization of 273 contract workers engaged for several years is kept in abeyance for the reason of want of approval or sanction from the Government and it is wrong and illegal. Those employees are to be regularized in view of the decision of the Hon'ble Supreme Court in Vegotis Pvt. Ltd. Vs. The Workmen reported in AIR 1972 SC 1942. In a case of this nature the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar passed an award in favour of the workers and the challenge against it up to the Apex Court was turned futile. Hence those workers are entitled to get regularized in the regular posts from the date of their posting with the service benefits as paid to similarly placed permanent workers in the Cochin Port Trust with retrospective effect.

4. Management filed written statement denying the claim for regularization and the allegations made in support of the same in the claim statements. The contentions put forward are that the workmen involved in the dispute were not employed by or through a contractor. But they were directly engaged by the management of the Cochin Port Trust on specific terms and conditions for a definite period. They are not contract labour as defined under Section 2(1)(b) of the Contract Labour (Regulation and Abolition) Act, 1970 as they are given direct appointment coming to an end with the expiry of the period of contract. They cannot claim to be made permanent even if they have continued beyond the term of their appointment. They are not entitled to be absorbed in regular service or can be made permanent. Long service of a contractual employee do not acquire any right for permanent appointment. Cochin Port Trust is an autonomous body functioning under the administrative control of the Ministry of Shipping, Government of India and hence it is bound to comply with the directions and orders that are issued by the Government periodically. Out of the total 255 contractual employees now engaged 179 are dependents and the remaining are engaged from outside in exigency only for operational requirements, when technical personnel are not available in the Central Agency, duly following the prescribed norms. They are not engaged against regular vacancies but in exigency of operations. As to the claim for compassionate appointment is concerned Government of India vide O.M. No .14014/6/ 1994/ Estt(D) dated 9-10-1998 issued "revised consolidated instructions on the scheme for compassionate appointment". A perusal of clause 7(b) of the scheme reveals that compassionate appointments can be made up to a maximum of 5% of the vacancies falling under direct recruitment quota in any Group 'C' or 'D' posts. Board of Trustees of Cochin Port Trust implemented the Official Memorandum and it was resolved that employment assistance was to be given to the dependents of the employees who died in harness and the dependents of the invalidated employees in the ratio of 3:1. There are 236 dependents awaiting compassionate appointment, out of whom 179 willing dependents were given contractual appointment in the Cochin Port Trust. After considering the list of dependents Cochin Port Trust submitted a request in 2003 to the Government of India seeking approval for filling 200 vacancies with the dependents as a one-time measure. But it has not got approval from the Government of India so far. The Government of India imposed a general ban on recruitment and it was later partially modified by the Government vide annual recruitment plan and allowed to fill up 1/3 of the vacancies arising during the year subject to a maximum of 1% of the sanctioned strength of the Port from time to time on observance of due formalities. Consequent on the ban imposed by the Government of India on direct recruitment Cochin Port Trust was constrained to engage persons on contract basis to meet the operational requirements which are of exigent nature. They were

mostly selected from the dependents of deceased employees registered for compassionate appointments and willing to work on contract basis. They were engaged with appropriate wages for sustenance as they wait for their turn for regular compassionate appointment. When candidates were not available from among dependents in Central Agency for specialised jobs like hospital para-medical staff, candidates are taken on contract from outside by providing appropriate wages with annual increase of wages based on increase in variable DA. The Cochin Port Trust is a Major Port constituted under the Major Port Trust Act, 1963. As per Section 3 of the said Act, Ministry of Shipping, Government of India has the authority to issue guidelines and directions to the Port on policy matters. Though there is a decline in the employment strength there is adequate manpower for handling cargo even when there is considerable increase in the traffic handling. The essential posts are being filled up through the Annual Recruitment Plan process from time to time and hence there is no adverse situation in any department. Management is providing appropriate wages to the contract employees. They are enjoying weekly off and also holidays. They are getting out patient treatment from Cochin Port Trust Hospital. They are being paid extra remuneration for over time duty. If they are deputed to work on holidays and weekly rest days they are given compensatory off. Their regularisation or absorption is a policy matter and the Ministry has the authority to decide and issue directions to the Port Trust. If the Port Trust had the authority to create posts and regularisation of its own then the Ministry would not have issued an order imposing ban. Though Cochin Port Trust is an autonomous body under the Ministry of Shipping it has to operate on commercial basis without any normal budgetary support from the Government. The Cochin Port Trust has engaged employees on contract basis following the norms in exigency only and therefore there is no justification in the demand of the unions to regularize them and it has the potential to make it overburdened and economically unviable. The judgment referred to is not relevant as the persons involved in that case are engaged through contractors and governed by the provisions of the CLRA Act. Management is not aware of the award of the CGIT-cum-Labour Court, Bhubaneswar in Industrial Case No.112/2001. The dispute is not maintainable and the demand of the unions for regularizing the services of the workmen who are given contractual appointment by the Cochin Port Trust is not legal and justified. Hence they are not entitled to any relief.

5. Unions 1 & 2 filed separate rejoinder denying the contentions in the written statement and reaffirming the allegations in the claim statements.

6. For the purpose of deciding this reference evidence was adduced from both sides and it consists of the depositions of WW1, WW2 and Exts.W1 to W-20 and M1 to M17. After closing the evidence the arguments for both sides were heard.

7. The points for determination are :

1. Whether the demand of the unions for regularisation of 273 employees by the management is legal and justifiable ?

2. Reliefs and costs?

8. **Point No.1:** Regularisation of the employees engaged purely on contract basis in different categories by the management is sought for by the unions without giving the names and other details of service stating that there are 273 such employees. For the purpose of regularisation or for absorption it is necessary to have the relevant datas pertaining to each of such employees. Except the bald statement in the claim statement that there are 273 such workers there was no attempt on the part of the unions to furnish the details of those employees. It is specifically contended in the written statement that there are only 255 employees at present working under the management on contract basis. Ext. M14 produced by the management will also go to show that the number of such employees as 01-4-2010 is only 255. Eventhough nothing is stated about it in the rejoinders filed by the two unions it is averred in para 5 of the proof affidavit of WW1 that there are about 273 such employees engaged by the management on contract basis. In the proof affidavit of WW2 also it is stated that the dispute is as to the non regularisation of 273 workmen engaged on contract basis in different posts under various departments and also in the nature of Leave Reserve Pool in Cochin Port Trust. Without having a list of employees with the relevant datas it is difficult to consider the question of regularisation of those employees.

9. In order to consider the claim for regularisation it is necessary to know the selection process, the qualifications, the manner of appointment, the nature of the post of appointment, the length of service, the performance and other details of each of the employees. The recruitment rules in respect of the engagement on temporary basis is not forthcoming. The appointment of those employees are on contractual basis for a period of 89 days is evidently clear from Ext.W1, W19 & W20 advertisements as well as Exts.W3 to W5, W9, W12 to WI14 appointment orders. In Ext.W1 advertisement itself it is made clear that the appointment is on contract basis for a consolidated salary and is purely temporary and liable to be terminated without any notice. It is relating to the post of Pharmacist Gr.II. Exts.W3 to W5 relate to the appointment of one Manju in that post for a period of 89 days from time to time. In all those appointment orders it is specifically stated that the appointment is

purely on contractual basis and shall not confer any right for regular appointment. Further it is also made clear that the appointment can be terminated at any time without any notice during the period of contract for non satisfactory performance of the duties assigned to her or for any other reasons. Exts. W9 and W10 relate to the inclusion of one Praveen in the list for leave reserve pool of Fireman. In Ext. W9 it is expressly made clear that enlistment shall not confer on him any right of regular appointment and that the enlistment shall be terminated at any time without notice. The terms and conditions attached to it which is separately marked as Ext. W-10 would also go to show that the listing of his name in the reserve pool is purely on contract basis and shall not confer on him any right of regular appointment. It is further stipulated that the leave reserve pool shall be stopped at any time without notice. Exts.W-12 to 14 are the copies of the orders appointing Smt. A.T.Christina in the post of Sweeper/Mazdoor from time to time. Those will also go to show that the appointment was on contract basis on payment of wages @ Rs.191 per day for a period of 89 days. It is also made clear that the appointment is purely on contract basis and shall not confer her any right for regular appointment and the services shall be terminated at any time without notice.

10, The appointments are made by the management directly on contract basis for a fixed term. After having a short break they are seen to have been appointed from time to time. Their period of service is stated to be 3 to 15 years. The actual period of service of each of the employees is not known. First union has got a case that they are contract labour coming within the purview of Contract Labour (Regulation and Abolition) Act, 1970. It is also alleged that it is an unfair labour practice to appoint such persons without the wages and other benefits of a regular employee. As the employees are directly engaged by the management through a selection process and not through the engagement of the contractor those employees at any cost cannot be said to be employees coming within the purview of the said Act. There is no prohibition for engagement of such employees by the management purely on contract basis or on temporary basis. Such engagement will not confer any right on such employees to make claim for regularisation in view of the decision reported in Secretary, State of Karnataka and Others Versus Umadevi (3) and Others (2006) 4 Supreme Court Cases 1. Therein it was held that in the case of temporary appointment it will come to an end with the expiry of the period and there is no right of permanence to such appointees even in a case of continuance of such appointment. Paras 43 to 45 of the Judgment are relevant to consider this case and hence the same is extracted below :

"43. Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or

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lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such causal or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution".

11. The dictum laid down in that case was to a certain extent watered down by a two Judges Bench of the Supreme Court in the decision reported in U.P. State Electricity Board v. Pooran Chandra Pandey and Others 2008 (116) FLR 1172 (Supreme Court). But later in Official

Liquidator v. Dayanand and Others (2008) 10 SCC 1 it was held by a three Judges Bench of the Apex Court that by virtue of Article 141, the Judgment of the Constitution Bench in Umadevi (3) case is binding on all the courts including the Supreme Court till the same is overruled by a larger Bench. The decision in Umadevi (3) case overruled the earlier decisions as to the legal position as to regularisation of temporary, contractual, causal, daily wage or ad-hoc employees in order to put an end to the menace of illegal and backdoor appointments. Para 53 of the judgment in Umadevi (3) case provides a one-time measure for regularisation of temporary employees or daily wagers irregularly appointed who have worked for 10 years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals within a period of six months by filling the vacant sanctioned posts that required to be filled up. If such a measure was not adopted by the management the unions ought to have taken up the matter at the appropriate time.

12. According to the union the appointments were made against regular posts which are kept unfilled for the reason that there is a ban on direct recruitment imposed by the Ministry of Shipping and that all the vacancies which are regular/perennial in nature which require for the uninterrupted operation In the Port can be filled through absorption of those employees. They have also got a case that as the workmen were appointed directly by the management and after observing all the recruitment formalities and procedures and they were working for years together continuously against those regular vacancies they can be regularized. In order to prove that they were appointed through a selection process unions have produced Exts.W1, W2, W6, W7 and W-11. All those would go to show that there was a selection. But whether it was as per the recruitment rules for the posts in each category is not proved by adducing any evidence. From M-15 it can be seen that there is recruitment rules for the posts of Principal, Vice-Principal and Sister Tutor of School of Nursing attached to Port Trust Hospital. From the evidence adduced in this case it is not possible to ascertain whether there is any recruitment rules with regard to temporary appointments. It is already pointed out that the rules regarding recruitment for each of the categories for regular employment is not available. From Ext.W1 and the appointment orders produced in this case it is patently clear that the appointment was for a period of 89 days. Even in managerial posts the appointments are made purely on templorary basis liable to be terminated at any time without any notice and it is evident from Exts.M-16 and M-17. There was ban on direct recruitment to civilian posts and the same is evidenced by Ext.M2. There is the direction contained in Ext.M2 that direct recruitment would be limited to 1/3 of the direct recruitment vacancies arising in the year subject to a further ceiling that it does not exceed 1% of the total sanctioned strength of the department. Unions have also got a case that the dependants of the deceased/ invalidated employees are eligible for regular appointment on compassionate ground and those dependents who were temporarily appointed are to be absorbed in the regular post. It is not in dispute that 179 out of the contractual employees are dependents waiting. for compassionate appointment. According to the management there is a list of dependents of 236 persons for appointment on compassionate scheme. But they can be appointed in the regular posts only in the vacancies for compassionate appointment. Ext.M1 is the copy of the revised consolidated instructions on the scheme for compassionate appointment wherein it is expressly provided that compassionate appointments can be made up to a maximum of 5% vacancies falling under Direct Recruitment Quota in any group "C" or "D" post. It however provides that a person selected for appointment on compassionate ground should be adjusted in the recruitment roster against the appropriate category visibly SC/ST/OBC / General depending upon the category to which he belongs. Here in this case it is not a question as to appointment of persons as per that scheme. Some of the dependents who were willing to work on contract basis was appointed by the management instead of allowing them in the queue for appointment to regular posts observing the directions contained in the scheme for compassionate appointment. Some of them who are the members of the unions in this case had approached the Hon'ble High Court by filing Writ Petitions for their absorption and the same is evidenced by Exts.M5 & M7. In order to answer this reference it is only to be considered whether their contractual appointments entitled them to have regularisation or absorption. It will not in any way make it necessary to consider the question of appointment under the compassionate scheme. It is only to be decided whether all the contractual appointees are to be regularized. Whether the management has itself got power to regularize or it is to be with the approval of the Ministry of Labour crops up for consideration only when there is entitlement for regularisation of the contractual appointees. The award of the CGIT-cum-Labour Court, Bhubaneswar and the other decisions referred to in the claim statement of the first union are not at all applicable to the facts of the present case. It has also not got relevance after the decision in Umadevi (3) case.

13. On a consideration of the facts and circumstances in this case it can very well be held that the employees engaged purely on temporary basis by the management for a fixed period are not entitled for regularisation even though they have continued to work

with break for years. Hence I find that the demand of the two unions to regularize the contract workmen employed by the Cochin Port Trust is not legal and justified.

14. **Point No.2:** In view of the above finding the demand of the unions to regularize the contract workmen employed by the Cochin Port Trust is not legal and juatified. They are not entitled to any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 15th day of November, 2012.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witnesses for the Unions

WW1 — A.Radhakrishnan, S/o.Kochu Govindan Nair, Asst. Cashier, Central Accounts Department, Cochin Port Trust, Cochin-9.

WW2 — P.B.Muthu, S/o. P.K. Bakker, Pallath Puthenpurayil, Vazhakkala South, Kakkanad West Post, Kanayannoor Taluk, Vazhakkala Village.

Witness for the management

WW1 — Philip Bency, S/o. Joseph, 26/2029 D, Santhinagar, Thevara.

Exhibits for the unions

WW1 — Photocopy of the advertisement calling applications for the temporary post of Pharmacist Grade-II for appointment in the Cochin Port Trust Hospital on contract basis.

WW2 — Photocopy of the Memo No.C-I/Contract Posting/Pharmacist/06-H dated 19-10-2006 issued by Chief Medical Officer, Cochin Port Trust, Medical Department, Willingdon Island, Kochi-682 003 to Smt. Manju V.

WW3 — Photocopy of the Appointment Order No.CI/ Con.Pharmacist Gr.II. 2006-H dated 03-11-2006 of Smt.Manju V. issued by Chief Medical Officer, Cochin Port Trust, Medical Department, Willingdon Island, Kochi-682 003.

WW4 — Photocopy of the Appointment Order No.CI/ Contract Phr. Gr.II/MV /2007-H dated 08-02-2007 of Smt.Manju V. issued by Chief Medical Officer, Cochin Port Trust, Medical Department, Willingdon Island, Kochi-682 003.

WW5 — Photocopy of the, Appointment Order No.CI/ Contract Phr. Gr.II/MV /2007-H dated 09-05-2007 of Smt.Manju V. issued by Chief Medical Officer, Cochin Port Trust, Medical Department, Willingdon Island, Kochi-682003.

WW6 — Photocopy of the advertisement dated 16-05-2003 published in the Mathrubhumi daily calling application for the post of Fireman in the Cochin Port Trust.

WW7 — Photocopy of the advertisement published in the Manorama Thozhil Veedhi calling application for the post of Fireman in the Cochin Port Trust.

WW8 — Photocopy of the Memo No.BI/Fireman/2003-D dated 26-09-2003 issued by Dy. Conservator, Cochin Port Trust, Deputy Conservator's Office, Cochin - 9 to Shri.Praveen P.A.

WW9 — Photocopy of the Memo No.BI/Fireman/2003-D-5 dated 10/13-10-2003 issued by Dy. Conservator, Cochin Port Trust, Deputy Conservator's Office, Cochin - 9 to Shri. Praveen P.A.

WW10 — Photocopy of the acknowledgement dated 17-10-2003 of Shri.Praveen P.A. as to joining duty.

WW11 — Photocopy of Memo No.B-4/Sweeper/ Mazdoor/Contract/06-D dated 02-08-2006 issued by Dy. Conservator, Cochin Port Trust, Deputy Conservator's Office, Cochin-9 to Smt. A.T. Christina.

WW12 — Photocopy of Appointment Order No.B-4/ Contract/Sweeper/Mazdoor/2006-D dated 08-08-2006 of Smt. A.T. Christina issued by Sr. Dy. Chief Accountant, Cochin Port Trust, Deputy Conservator's Office, Cochin-9.

WW13 — Photocopy of the Appointment Order No.B-4/Contract/Sweeper/Mazdoor/06-D dated 04-11-2006 of Smt. A.T. Christina issued by Sr. Dy. Chief Accountant, Cochin Port Trust, Deputy Conservator's Office, Cochin-9.

WW14 — Photocopy of the appointment Order No.B-4/Contract/Sweeper/Mazdoor/07-D dated 07-02-2007 of Smt. A.T. Christina issued by Sr.Dy.Chief Accountant, Cochin Port Trust, Deputy Conservator's Office, Cochin-9.

WW15 — Photocopy of the Award dated 20-03-2003 in ID.No.112/2001 of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar.

WW16 — Photocopy of the Judgment dated 23-07-2004 in W.P.(C) No.6393/2003 of the Hon'ble High Court of Orissa, Cuttack.

WW17— Photocopy of the Judgment dated 31-08-2007 in Writ Appeal No.35 of 2004 of the Hon'ble High Court of Orissa, Cuttack.

WW18— Photocopy of the Order dated 29-10-2007 in the Petition for Special Leave to Appeal (Civil) No. 19653/2007 of the Hon'ble Supreme Court of India.

WW19— Photocopy of the advertisement No.C1/ Contract Staff/2002/ -H dated 11-02-2002 of the Chief Medical Officer, Cochin Port Trust, Medical Department, Cochin 682 003.

WW20— Photocopy of the advertisement No.C1/ Contract Appointment/02-H dated 07-11-2002 of the Chief Medical Officer, Cochin Port Trust, Medical Department, Cochin-682003.

Exhibits for the management

M1 Photocopy of OM. No. 14014/6/94-Estt.(D) dated 9-10-1998 of Department of Personnel and Trainings.

M2 Photocopy of the O.M.No.2/8/2001-PIC dated 16-05-2001 of Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training.

M3 Photocopy of the Order No.LO/22/WRC/2009 dated 04-11-2009 issued by Secretary, Cochin Port Trust.

M4 Photocopy of the Circular No.A2/Contract Employees/2002-5 dated 04-07-2002 issued by Deputy Secretary, Cochin Port Trust, Secretary's Office, Cochin -682 009.

M5 Photocopy of the original petition in W.P.(C) No.32378 of the Hon'ble High Court of Kerala.

M6 Photocopy of the Counter Affidavit filed by the respondent in W.P.(C) No.32378 of 2004 of the Hon'ble High Court of Kerala.

M7 Photocopy of the original petition in W.P.(C) No.33509 of 2004 of the Hon 'ble High Court of Kerala.

M8 Photocopy of the counter affidavit filed by the second respondent in W.P.(C) No.33509 of 2004 of the Hon'ble High Court of Kerala.

M9 Photocopy of the Writ Petition (Civil) No.30473 of 2010 of the Hon'ble High Court of Kerala.

M 10 Photocopies of the lists of Class wise Distribution of Posts in different departments in respect of Class-I, Class-II, Class-III and Class-IV of the Cochin Port Trust.

M 11 Photocopy of the statement showing the year wise details of Retired/Expired regular Employees of Cochin Port Trust from 1999 to 2010.

M12 Letter No.FS/104/04 dated 05-01-2004 addressed to the Deputy Conservator, Cochin Port Trust by the Chief Fire cum Assist. Safety /Pollution Control Officer.

M13 Note No.C1/F-20/appointment/2010-H dated 05-10-2010 of the Chief Medical Officer, Cochin Port Trust, Medical Department, Cochin-3 to the Secretary, Cochin Port Trust.

M 14 Photocopy of the Details of contractual appointments in Cochin Port Trust as on 01-04-2010.

M15 Photocopy of the Board Resolution Nos.146 and 147.

M16 Photocopy of the Order No. C1/C1.III/SSC/ Regularisation/UM/2001-H dated 19-05-2001 issued by Chief Medical Officer I/C, Cochin Port Trust, Medical Department, Kochi -3 to Smt. Usha Marath.

M17 Photocopy of the Order No.C1/Nursing School/ SJ/2002-H dated 18-01-2002 issued by Chief Medical Officer, Cochin Port Trust to Smt. Sisy Jose, Vice Principal, School of Nursing.

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 33.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 2/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-12-2012 को प्राप्त हुआ था।

[सं. एल-12011/26/2004-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 33.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2004) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 3-12-2012.

[No. L-12011/26/2004-IR (B-II)]
SHEESH RAM, Section Officer

4760 GI/12-23

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. RASTOGI, Presiding Officer.

Case No. 1.D. 2/2004

Registered on 30-11-2004

The President, Central Bank of India Employees, Union Haryana, 129, Lal Kurti, Ambala Cantt, Haryana.

...Petitioner

Versus

The Regional Manager, Central Bank of India, 106, Railway Road, Ambala Cantt, Haryana.

...Respondent

APPEARANCES

For the workman : Sh. B. S. Gill A.R.

For the Management : Sh. A.K. Batra Manager.

AWARD

Passed on 20th November, 2012

Central Government vide Notification No. L-12011/26/2004-IR(B-II), Dated 3-6-2004, by exercising its powers under, Section 10 Sub-section (1) Clause (d) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act', has referred the following industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Central Bank of India, Ambala Cantt in non-considering the pension option scheme opted by Sh. Mahender Lal Jassi, Clerk, Barwala Branch of the bank is legal and justlfled? If not, what relief the said workman, is entitled to?"

As per claim statement the workman is in the service of the bank since 29-9-1978 and he had opted for pension as per Central Bank of India Employees Pension Regulation 1995. The management vide letter dated 5-1-1996 had acknowledged his application for pension and stopped deducting the banks contribution towards Provident Fund account of the workman w.e.f. January 1997. But the management without any notice to the workman treated, him non-optee for pension. He has prayed with a direction to the management for not abusing their powers.

The management has contested the claim. In its written statement it has been stated that the workman had never applied for the pension. He is taking undue advantage of the letter issued to him due to technical error and which had been subsequently rectified vide letter dated 14-9-2000. He had been informed that the letter of acknowledgment of pension option had been issued by the Central Office on account of technical error and had been rectified in the PF statement of March, 1996. According to the management the claim of the workman deserves dismissal.

Workman filed a rejoinder to the reply of the management.

In evidence workman examined himself while the management first examined ML Jain but subsequently withdrew his affidavit and filed the affidavit of and examined A K Batra, Manager, CBI, Regional Office, Ambala Cantt. Parties have relied on certain papers also.

None appeared to argue the case on behalf of parties. I have perused the evidence myself carefully. The case of the workman is that he had opted for pension scheme and the bank had acknowledged his application for option vide letter dated 5-1-1996 and had stopped contributing towards Provident Fund w.e.f. January, 1997. The bank denies that the workman had opted for pension but admit that the management had issued him letter dated 5-1-1996 but that was due to 'technical error'. His name was in the list of non-optees for pension and the mistake had been rectified in the PF statement of March, 1996. The bank has not elaborated as to what was the 'technical error' due to which the acknowledgment letter dated 5-1-1996 marked 'A' in the statement of management witness and also relied by the workman, was issued by the management. After admitting to have issued this letter the burden was on the management to prove that it had been issued due to alleged 'technical error'. The alleged 'technical error' should have been explained. Evidence should have been led as to how the error erupted, who was responsible for it, what action was taken against the erring official, and the mistake was rectified.

Paper No. 49 to 53 filed by the bank shows that the bank stopped contrbuting towards Provident Fund of the workman w.e.f. January, 1997 till March, 2003. It is true that through letter Marked 'A' the workman had been Informed through Branch Manager, Barwala that the acknowledgment of pension option of the workman had been issued due to techanical error and he was member of CPF only. But that letter is dated 14-9-2000. There is no evidence to support the statement in the letter that the mistake had been rectified in the PF statement of March, 1996. The plea of the bank, therefore, that the acknowledgment letter dated 5-1-1996 had been issued due to technical error and the workman had not opted for pension option cannot be accepted. The bank therefore, is not justified in not considering the Pension Option opted by the workman. The reference is answered in favour of the workman. The bank is directed to consider the workman as a pension optee and to act upon its Banks Letter dated 5-1-1996. Let two copies of the award be sent to the Central Government and one copy to District Judge Ambala Cantt, Haryana for information and further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 34.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, पणजी के पंचाट (संदर्भ संख्या आई टी/40/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/131/91-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th December, 2012

S.O. 34.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. IT/40/91) of the Industrial Tribunal/Labour Court, Panaji now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/131/91-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT, GOVERNMENT OF GOA AT PANAJI

(BEFORE SMT. BIMBA K. THALY, Presiding Officer)

REF. No. IT/40/91

Workman rep. by
The General Secretary,
Dena Bank Employee Union,
Goa Branch,
Panaji, Goa ... Workman/Party I

V/s

Regional Manager,
Dena Bank, Ganesh Bhawan,
Dadar, Bombay ... Employer/Party II

Party I/Workman represented by Shri Subhash Naik Jorge.

Party II/Employer represented by Adv. Shri P.J. Kamat.

AWARD

(Passed on 26th day of September, 2012)

By order dated 28-8-91, the Central Government in exercise of the powers conferred by clause (d) of sub- section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), (for short the Act) has referred the following dispute for adjudication.

"Whether the action of the management of Dena Bank, in terminating the services of Shri. Pedro Rocky Pereira, Subordinate staff is justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference IT/40/91 was registered. Notices were issued to both the parties under registered A/D post upon which both the parties were served. Party I filed the statement of claim at Exb. 5. Party II filed the written statement at Exb. 6. Rejoinder was filed by Party I at Exb.7.

3. It is in short the case of Party I that the workman / Party I was engaged by Party II as a daily wager in the leave vacancy of subordinate staff at Vasco da Gama, branch and that he was first employed on 28-3-88 as daily wage Peon and his age at that time was 22 years. It is stated that since that time the workman was working as daily wage peon at that branch whenever the peons in that branch went on leave. It is stated that the workman was not issued any appointment letter and he was also not asked to sign any attendance register and his daily wage payments were made by the Branch Manager by preparing a voucher called Charges Debits Voucher which was prepared by Clerk/Officer and signed by the Manager or officer directing the Cashier to make payments of daily wage workman. The entryof such payments was made in the Officers-Cash-Scroll and cashiers-cash-scroll. It is stated that the workman was not paid bonus. It is stated that this branch had two subordinate staff/peons namely Shri Amar D'silva and Shri C.Y. Kadam and whenever either of these persons went on laave, the services of the workmen were engaged. It is stated that Shri Amar D'Silva left the services or his services were terminated somewhere in October 1990 and thereafter the bank engaged services of another Peon by name Shri Naik and upon such appointment, the services of the workman were orally terminated on 22-10-90. It is stated that the services of the workman were terminated without assigning any reason, without giving one month's notice and without payment of retrenchment compensation and fifteen days wages for every year of service as per Section 25F of the Act. It is stated that one year prior to this termination w.e.f. 22-10-90 the workman had put in over 240 days of service in the bank. It is stated that for a period from 22-10-89 to 22-10-90 the workman had put in over 240 days of service. It is stated that the workman then addressed a letter dated 6-11-90 to the bank with copy to Asstt. Labour Commissioner (Central) Vasco da Gama Goa raising an Industrial Dispute and thereafter Dena Bank Employees Union (Goa Branches) raised an Industrial Dispute on this subject which was later admitted in conciliation but as there was no settlement the Asstt. Labour Commissioner submitted a failure report. It is stated that the termination of the workman w.e.f. 22-10-90 is illegal and unjustified and therefore the workman has prayed to reinstate him in service with full back wkges and continuity in service and

also to pass such award and/or order as deemed fit in the facts and circumstances of the case.

4. In the written statement the Party II has denied the case of workman and has stated that the requirerment of the sub-staff cadre of the bank is governed by the Central Government Guidelines issued from time to time under which such persons having the requisite age and qualifications and sponsored from the local employment exchange are interviewed by the bank and the candidates successful at the interview are empanelled in order of merit. It is stated that apppintment letters are issued to such candidates in the order of merit as and when the vacancies are approved by the head office and that a separate panel has to be miaintained for General, SC/ST and Physically Handicapped categories. It is stated that the requisite age and qualification for the post of subordinate staff is not below 18 years and not exceeding 26 years so also not below 7th Standard pass and not above 9th standard pass. It is stated that the workman was engaged on daily basis to meet extra work resulting from arrival of stationary items or running errands during certain functions etc. as he was sponsored by the employment exchange and empanelled as per the Government Guidelines. It is stated that the services of the workman were utilized as and when there was temporary work. It is stated that therefore the question of issuing appointment order does not arise in case of workman engaged on temporary basis /daily wages and he was also not asked to sign any attendance register. It is stated that from the bank records the temporary services of the workman were utilized from 21-3-88 to 26-3-88 and 28-3-88, 1-2-89 to 3-2-89, 6-2-89 to 8-2-89 and 25-5-89 to 5-6-89. It is stated that as per Bi-partite Settlement a temporary workman can be appointed for a limited period of work. It is stated that the bank is fully justified in not considering the claim of workman for payment of bonus in view of the provisions of the Bonus Act and that the question of signing attendance register/muster roll does not arise since the services of the workman were utilized only on the days stated above. It is stated that upon termination of the services of Shri Amar D'Silva in February, 1990 the bank following by the procedure as per the Government Guidelines appointed Shri S.P. Naik on permanent basis at Vasco da Gama branch. It is stated that as per the record of the bank the workman has worked for total 25 days in the year 1988 -89 and therefore the question of terminating his services and payment of retrenchment compensation does not arise. It is stated that the contention of Party I of having worked for 240 days or more is not correct. It is stated that the action of the management in discontinuing the services of the workman is therefore legal and justified. Thus, amongst above and other grounds Party II has prayed to reject the application of the workman.

5. Inthe rejoinder Party I has denied the averments made by of Party II in the written statement.

6. On the basis of the above pleadings of the parties, issues at Ex. 8 were framed.

7. In the course of evidence the workman examined himself as witness no. 1 and closed the case. On the other hand Party II examined Shri J.P. Kurias as witness no. 1 and Shri Chandrakant M. Kokane as witness no. 2 and closed the case. Both the parties have filed the written submissions, which are on record. I have also heard the arguments advanced on behalf of both the parties.

8. I have gone through the records of the case and have duly considered the submissions of both the parties. I am reproducing herewith the issues along with their findings and reasons thereof.

Issues	Finding
1. Does Part I workman prove that he was appointed on daily wages by Party II - Dena Bank and that he rendered services from 21-3-88 to 22-10-90?	Partly in the Positive only to the extent of appointment of Party I workman on daily wages, by Party II.
2. Does Party II bank prove that Party I , was engaged for performing casual work on daily basis and that he was not sponsored by the Employment Exchange and empanelled as per the Government Guidelines and hence he was not entitled for any appointment?	In the positive
3. Does Party I prove that the action of Party II/Dena Bank in terminating his services is not legal and justified ?	In the negative
4. Whether Party I is entitled to any relief?	In the negative
5. What Award or Order?	As per order below

REASONS:

9. **Issue No.1:** There is otherwise no dispute that party I workman was appointed on daily wages by Party II Dena Bank. What is disputed by Party II is the fact of Party I/workman rendering services from 21-3-88 to 22-10-90. In his evidence the workman has stated that he was employed with party II on 21-3-88 at Vasco branch, as peon. He has stated that he has worked till 21-10-90 and that when he went for work on 22-10-90, he was told by the Manager that he should not attend the work from that day as another person was appointed in his place. He has produded at Exb. W-1, annexure-A in which he has given the particulars of his service. He has stated that whatever particulars given by him in Exb. W-1 are entered in the Income Charges Ledger and that the particulars in the

same are given excluding Sundays and holidays. In his cross examination he has made it clear that Exb.W-1 has been prepared by him on the basis of the record maintained by him in diary, whenever vouchers were being prepared by the Manager of Party II. He has stated that he cannot produce the said diary as it was misplaced in the year 1994.

10. It is therefore clear from the nature of above evidence that the contention of the workman, that he was employed with Party II from 21-3-88 to 21-10-90 is not established by Exb.W-1 as no authenticity could be attached to Exb. W -1 since the basis on which it has been prepared, is uncertain .

11. It is also brought on record in the cross examination of the workman that he was not called for work by Party II from 29-3-88 till 31-1-89 so also from 1-5-88 to 23-5-88, on 4-2-89 and on 10-2-89. It is further apparent from the cross examination of the workman that his name does not figure on the cash scroll for the period 27-5-89, 28-6-89, 10-7-89, 13-9-89, 22-9-89, 29-9-89, 11-10-89, 27-11-89, 1-1-90, 13-1-90, 1-2-90, 17-2-90, 3-3-90, 17-3-90, 31-3-90, 12-4-90, 23-4-90, 30-4-90, 17-5-90, 1-6-90, 13-6-90, 25-6-90, 2-7-90, 21-1-90, 30-7-90, 23-8-90, 8-9-90, 15-9-90, 15-10-90 and 22-10-90. The workman has also admitted that his name does not figure on the cash scroll against the above dates. It is also brought on record in the cross examination of the workman that his name does not figure on the voucher dated 27-9-89 (Exb.E-3), 22-2-89 (Exb.E-5), 29-9-89 (Exb.E-6), 10-7-89 (Exb.E-7),. 1-2-90, 17-2-90, 3-3-90, 17-3-90, 31-3-90, 12-4-90, 23-4-90, 30-4-90, 17-5-90, 1-6-90, 13-6-90, 25-6-90, 3-7-90, 21-7-90, 30-7-90, 23-8-90, 8-9-90, 15-9-90, 15-10-90 and 22-10-90 (Exb.E-8 colly), It is also stated by the workman in his cross examination that his signature appears on the voucher dated 13-9-89 (Exb.E-4), 4-2-89, 10-2-89 and 8-6-89 (Exb-9 colly). Thus, from the nature of above evidence it becomes clear that the workman worked intermittently i.e. only when the work was available.

12. It is also brought on record in the cross examination of the Party II that he had made an application dated 28-7-90 (Exb.E-10) to Party II for employing him as a Peon and had mentioned in the said application that he had adequate working knowledge in various offices including banks, on daily wages. Further, he has admitted that in his application dated 28-7-90 (Exb.E-10), which is an application made by him to the Assistant General Manager for the post of Peon, he had not stated that he had been working with party II as a Peon from 1988 till the date when the application was made. Thus, from above, it becomes clear that Party I workman was employed only for few days as a daily wager.

13. Be that as it may, even Shri J.P. Kurias has denied the suggestion that the services of the workman were terminated on 22-10-90 and no evidence suggesting otherwise has been brought on record in the cross examination of said Shri Kurias, moreso, because in his examination in chief Shri Kurias the Branch Manager of Vasco branch of Party II at the relevant time, has stated that he reported for duty at Vasco branch in August, 89 and took charge of the said branch in October, 89 and in the mean time the workman was engaged as sub staff in September, 89 for a period of one week and that he did not engage the workman as sub staff after he took charge of Vasco branch till he was transferred in July, 92.

14. As stated above, in his cross examination Shri Kurias has denied the suggestion that the services of workman were terminated on 22-10-90 and also that the workman had put in service of 240 days. He has also denied the suggestion that during the absence of Shri Amar D'Silva, the workman was doing the work of sub staff which was being done by Amar D'Silva. Upon being shown the copy of Income Charges Register (I.C.R.) for the period from, April, 1990 to January, 1991(Exb:W6), Shri Kurias has admitted that on 27-5-89 one Roque was paid the amount of Rs.160 for eight days work. He has also admitted that as per Exb.W6 one Roque was paid Rs. 180 on 8-6-89, Rs.180 on 16-6-89, Rs.200 on 10-7-89, Rs.20 on 11-7-89, Rs.300 on 15-9-89, Rs.160 on 22-9-89, Rs. 140 on 29-9-89, Rs.140 on 11-10-89, Rs.100 on 27-11-89 Rs.150 on 1-1-90, Rs.420 on 1-2-90, Rs,450 on 17-2-90, Rs.330 on 3-3-90, Rs.360- on 17-3-90, Rs. 330 on 31-3-90, 330 on 12-4-90, Rs.180 on 23-4-90, Rs. 180 on 30-4-90, Rs. 420, on 17-5-90, Rs.330 on 1-6-90, Rs.360 on 25-6-90, Rs.180 on 3-7-90, Rs.510 on 21-7-90, Rs.150 on 30-7-90, Rs.630 on 23-8-90, Rs.360 on 8-9-90, Rs.180 on 13-9-90 and Rs.300 on 27-9-90. Shri Kurias was also shown vouchers dated 11-10-89, 27-11-89, 1-2-90, 17-2-90, 3-3-90, 17-3-90, 31-3-90, 12-4-90, 24-3-90, 30-4-90, 17-5-90, 1-6-90, 13-6-90, 25-6-90, 3-7-90, 21-7-90, 30-7-90, 23-8-90, 8-9-90, 15-9-90 and 27-9-90(Exb.W9 colly) and according to Shri Kurias as per these vouchers one person was appointed on daily wage to do the work of sub staff and was paid wages mentioned in the said vouchers. Shri Kurias has admitted that as per Exb.W6 an amount of Rs.240 was paid to one Roque on 13-6-90 towards cycle repairs. Upon being shown the voucher dated 11-7-89 (Exb.W-7) Shri Kurias his admitted that as per the said voucher the person appointed on daily wage to do the work of Amar D'Silva, was paid Rs.20. Shri Kurias has further stated that the names of daily wagers were not mentioned in Exb.7 and Exb.W9 colly as the amount was paid to several daily wagers. He has denied the suggestion that Shri Roque worked at Vasco branch as daily wager in place of the sub staff for the days for which he worked on daily wages.

15. From the nature of above evidence, it becomes clear that it is an attempt on the part of the workman to establish that he is also known as Roque Pereira but as rightly pointed out by Ltd. Advocate for Party II neither in the claim statement or in his evidence or in the cross

examination of the management witnesses, it is the case of the workman that he was also known as Roque Pereira. No doubt, according to Ld. representative Shri Subhash Naik Jorge the above exercise was not required since in the terms of reference the name of the workman is mentioned as Shri Pedro Roque Pereira and even in the title of the claim statement the same name has been mentioned and therefore it is clear that the workman is also known by the name as Roque Pereira, however in the above context there appears to be substance in the contention of Ld. Advocate for Party II that there may be many persons by the name of "Roque" or "Pedro Pereira" and therefore one cannot infer that it was the said Party I workman having two names, engaged by Party II. Ld. Representative Shri Subhash Naik Jorge also contended that substantial justice must be given preference over technicalities and court must do justice at all costs and at the same time the court should not forget that justice should be tempered with mercy. In support of his above submissions he relied on the judgment in the case of Sankar Das S/o Late Nilamani Das, Jagatsinghpur V/s Paradeep Phosphates Ltd., represented through its General Manager (HR), Bhubaneswar and Anr. reported in 2012 III CLR 26. In the above case which is a review petition, consequent upon signing of the settlement between the parties, the management had revised the wages/ allowances of the non executive employees from 1-1-07 to 31-12-2011 and the Review petitioner had averred that he had no knowledge of the revision of wages. It was in such situation the court held that since the petitioner was entitled to get the salary of the relevant period, he was entitled to get the revised wages, as the substantial justice must be given preference over technicalities and the court must do justice at all costs and at the same time the court should not forget that the justice should be tempered with mercy. It is pertinent to note that in the instant case it is no where pleaded in the claim statement or suggested to the management witnesses that Party I workman and Roque is one and the same person and therefore the question of giving preference to the substantial justice over the technicalities, does not arise. Things would be different if even without pleading the above relevant fact, Party I had made out a case in the course of the evidence that he and Roque is one and the same person, then in such situation one would import the theory of substantial justice to advance the case of Party I. Consequently, it follows that Party I workman cannot take advantage of the name as "Roque" appearing on Exb.W-6.

16. It thus follows from above discussion that the vouchers referred to above show that Party I was engaged for 6 days in February 1989, 9 days in April 1989 and 15 days in August/September 1989 during the entire period from 21-3-88 to 22-10-90. Consequently it also follows that party I workman has not worked for a period of 240 days in the year 22-10-89 to 22-10-90 i.e. the year preceding his so-called termination on 22-10-90 and therefore he is not entitled for the benefit u/s 25F of The Act.

17. It may be mentioned there that in his arguments Ld. representative of Party I, namely Shri Subhash Naik Jorge has made it clear that Party I has no claim for regularization in service but his claim is for reinstatement in same post as daily wager. Even for that matter, I would refer to the judgment in the case of Secretary, State of Karnataka and others V/s, Umadevi and others 2006 II CLR 261, the observations in which indicate that unless the appointment is in terms of relevant rules, no rights are conferred on the appointee and that the contractual appointments come to an end at the end of the contract. It is also observed in this judgment that temporary employees cannot claim to be made permanent in expiry of the term of appointment and that long service of an adhoc employee do not acquire any right to permanent appointment. Since discussion above makes it clear that the appointment of party I workman was on leave vacancy which was purely on temporary basis, the claim put forward by Party I workman of reinstatement in the same post also cannot be granted. Hence my findings.

18. **Issue No. 2:** It is clear from the discussion in issue no.1 above, that Party I was engaged for performing casual work on daily basis. It is otherwise not the case of Party I that he was sponsored by Employment Exchange and empanelled as per the Government guidelines. Shri Chandrakant Kokane, the Senior Manager (Personnel) at Regional Office Thane has been examined by Party II to bring on record the copy of the guidelines along with the annexures, issued by Party II for appointment of sub staff, at Exb. E11 colly. He has stated that as per Exb. E 11 colly, for the general category employee, the age which is prescribed is not below 18 years and not exceeding 26 years and the educational qualification required is not below 7th standard pass and not above 9th standard pass. He has also stated that the general category employee in sub staff require the above education qualification and the age, for appointment and that they are required to be sponsored by the Employment Exchange. It may be mentioned here that there is nothing on record to indicate that Party I workman fulfilled the above criteria and on the contrary what appears from the cross examination of Shri Kokane is that the contents of Exb. E-11 colly are not disputed but according to Party I the above guidelines alongwith annexures were not sent to Vasco by Party II which suggestion, obviously, cannot be accepted. It is therefore clear from the evidence of Shri Kokane that Party I workman has even otherwise not fulfilled the requirements of aforesaid guidelines. Hence my findings.

19. **Issue No 3 and Issue No. 4 :** Since issue no. 1 is answered partly in the positive thereby negating the case of the workman that he rendered services from 21-3-88 to 22-10-90 and issue no. 2 in the positive, it is apparent that

termination of services of party I workman by Party II is legal and justified and therefore Party I is not entitled to any relief. Hence my findings.

20. In the result and in view of discussion supra, I pass the following :

ORDER

1. It is hereby held that the action of management of Dena Bank in terminating the services of Shri Pedro Rocky Pereira, Subordinate staff is justified.

2. The Party I workman is therefore not entitled to any relief.

3. No order as to costs.

Inform the Government accordingly.

B. K. THALY, Presiding Officer

Place : Panaji
Dated : 26-9-2012

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 35.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 82/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2012 को प्राप्त हुआ था ।

[सं. एल-22012/369/2004-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 35.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/05) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Hasdeo Area of M/s. SECL, through Shri Subash Sindhwani, and their workmen, received by the Central Government on 11-12-2012.

[No. L-22012/369/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/82/05

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Bhailal Kol & 22 Others,
S/o Pakkad Kol,
Ramnagar (New Dola),
Distt. Annuppur,
Madhya Pradesh. ...Workman

Versus

The Chief General Manager,
Hasdeo Area of M/s. SECL,
PO : South Jhagrakhand,
Distt. : Korea,
Chhattisgarh

M/s. Chanakya Transport (P) Ltd.,
Through Shri Subash Sindhwani,
27/94, Jawahar Nagar,
Raipur,
Chhattisgarh ...Managements

AWARD

Passed on this 22nd day of November, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/369/2004-IR(CM-II) dated 18-8-05 has referred the following dispute for adjudication by this tribunal :—

> "Whether the action of M/s. Chanakya Transport (P) Ltd. Transport Contractor, Hasdeo Area of SECL and the Chief General Manager, Hasdeo Area of SECL in retrenching Shri Bhailal Kol & 22 Others and non-payment of relevant dues is legal and justified? If not, to what relief the workmen are entitled?"

2. The case of the workmen in short is that the workmen in dispute had worked in Rajnagar Open Cast Mine. They had been engaged by the management of SECL, Hasdeo Area. He had completed 240 days in an year during their service tenure and worked 12 hours per day. It is stated that when the workmen came to know about the entitlement of NCWA, they had demanded overtime payment. The management of SECL through its name lender contractor with a view to victimize the workers, terminated the services without any notice and without payment of retrenchment compensation in violation of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). The contractor was name lender and camouflage. The workmen had worked more than three years and had completed 240 days @ rate of 12 hours per day. It is submitted that the workmen be reinstated with all back wages.

3. The management appeared and filed Written statement. The case of the management, inter alia, is that the alleged workmen had filed statement of claim but the same cannot be treated as statement of claim in the eye of law. The reference order is vague. These alleged workmen

were neither in the employment of the management nor they had been retrenched by him. The management of SECL engages contractors for various jobs. The M/s. Chanakya Transport (P.)Ltd. was founded by Wing Commander Subhash Sindhwani in accordance with the scheme for settlement of Military Personnel. The said contractor was awarded contract to deploying Pay Loader/ Tripper for loading of transport of coal from various quarries, surface and stocks. The alleged workmen were not workmen of SECL and they were never engaged by SECL. It is submitted that the award be passed in favour of the management.

4. The non-applicant No.2 M/s. Chanakya Transport (P) Ltd. appeared and filed Written Statement. This contractor entered into a contract with the management for transportation of coal on 11-2-1997 for a period from 5-2-96 to 4-2-01 which was subsequently extended till 3-2-05. The non-applicant No.2 never engaged any employee on permanent basis. It is stated that the alleged workmen Shri Bhailal Kol and 22 others were never appointed/engaged by the non-applicant No.2. Thus the question of retrenchment does not arise. It is stated that the non-applicant had paid all dues of his employees engaged in transport work. It is submitted that the alleged workmen are not entitled to any relief.

5. During the course of reference proceeding, the parties appeared and submitted that the dispute raised by the applicants have been settled amicably. They filed duly signed settlement dated 20-11-12 in the case. It is submitted that award be passed in terms of settlement. The following are the terms of settlement-

"Terms of settlement—

1.The Party No.3 Contractor herewith pay Rs.25,000 (Rupees Twenty Five Thousands) only to each workers concerned in this reference through account payee cheques against their full and final dues. Details of individual cheques given to the workmen is appended as Annexure-A.

2. That during the pendency of the dispute, workman namely Shri Santosh Kumar Shaw S/o Shri Roop Chand Shaw died. The party No.3 agrees to make payment of Rs. 25,000 to the legal heir of the above named workman/deceased.

3. The Party No.1 workmen agree that in view of the settlement, they will not raise any claim for any further amount or claim for employment with the management of SECL in any court of law against the contractor (Party No.3) as well as SECL, Hadeo Area (Party No.2).

4. The contractor (Party No.3) will make the payment of amount referred above through account payee cheque to all the workmen under the settlement. The settlement is full and final:

5. It is therefore requested that this Hon'ble Tribunal be pleased to pass an award in terms of the settlement."

6. It appears that Shri Nathulal Pandey has signed in representative capacity on behalf of all the workmen. It is evident that there is nothing illegal in the settlement and the settlement is fit to be accepted. Accordingly the reference is answered.

7. In the result, the award is passed in terms of settlement without any order to costs. The terms of settlement are part of the award.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 36.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 69/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/104/2008-आई आर (बी-I)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 36.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 69/ 2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 11-12-2012.

[No. L-12012/104/2008-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 69/2008

Date of Passing Award - 22nd November, 2012

Between :

The Asst. General Manager.
State Bank of India, Bapujinagar Branch,
Dist. Khurda, Bhubaneswar,
(Orissa) ...1st Party-Management

(And)

Their workman Sri Ramesh Chandra Swain,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (ORISSA) ...2 nd Party Workman

Appearances :

Shri Alok Das, Authorized Representative ...For the 1st Party-Management

None ...For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/104/2008-IR (B-I), dated 07-10-2008 to this Tribunal for adjudication to the following effect :

> "Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Ramesh Chandra Swain w.e.f. 30-9-2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? To what relief is the workman concerned entitled"?

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 14-11-1986 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 29-10-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

4760 GI/13-25

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being ID. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 117 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 14-11-1986 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1990 and 1993. But he was not found suitable hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/1999. Hence the above matter has attained finality and.

cannot be re-agitated. Since the services of Sri Swain had allegedly been refused employment in the year 2004 his claim has become stale by raising the dispute after ten years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the ID. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for 240 days as required under Section 25-F of the Industrial Disputes Act?

3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating services of Shri Ramesh Chandra Swain w.e.f. 30-9-2004 is fair, legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M. W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in ID. Case No. 7/2007 is given below for comparison with the dispute in the present case—

> Whether the action of the Management of State Bank of-India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 117 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25- H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged tennination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affimmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the lst Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee.His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In

view of the matter the action of the management of State Bank of India, Main Branch., Bhubaneswar in terminating the services of Sri Ramesh Chandra Swain with effect from 30-9-2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No.2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 37.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 89/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था।

[सं. एल-12011/14/2007-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 37.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12011/14/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan"

G. G. Palya, Tumkur Road,

Yeshwantpur, Bangalore - 560 022

Dated : 29th October, 2012

PRESENT : Shri S. N. NAVALGUND, Presiding Officer

C. R. No. 89/2007

I Party

The General Secretary,
Vijaya Bank Employees Association,
No. 67, K H Road,
Shanthinagar,
Bangalore - 560027.

II Party

The General Manager (P),
Vijaya Bank, Trinity Circle,
M G Road,
Bangalore - 560 001.

Appearances

I Party : None

II Party : Sh. B. C. Prabhakar/H. S. Priyank Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12011/14/2007 - IR(B-II) dated 26.06.2007 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Vijaya Bank in imposing the punishment of reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect on Shri Pramod Kumar Shori vide order No. PER:IRD:CHG:VIG: 3602: 2005 dated 22-09-2005 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference while registering it in CR No. 89/2007notices were issued to both the sides with direction to the I party to file the claim statement and the II party to file the counter statement. Though three times the notices were served on the I party nobody entered appearance and cared to file claim statement. After affording several opportunities to the I party to appear and file claim statement when same was not availed ultimately on 16-09-2010 taking that I party is not interested to appear and file claim statement the II party was called upon to file statement substantiating the impugned action taken against the I party workman. Accordingly on behalf of the II party on 03-01-2012 statement substantiating the impugned action came to be filed and there after when the matter was posted for evidence the affidavit of Sh. M. Jagan Mohan who was appointed as Enquiry Officer to conduct the Domestic Enquiry was filed and through him Ex M-1 to Ex M-17 the detail description of which are narrated in the annexure got exhibited. Having regard to the evidence of MW 1 and documentary evidence got

exhibited as Ex M-1 to Ex M-17 after hearing the learned advocate appearing for the II party being satisfied that all fair and proper opportunities were given to the I party workman in opposing the charges leveled against him by order dated 18-09-2012 the Domestic Enquiry is held as Fair and Proper.

3. Today when the matter came up for arguments on merits Sh. HSP for BCP while citing decision of Allahabad High Court in the case of V. K. Raj Industries vs. Labour Court and others reported in FJR Vol. 59 Page 304 urged that when the I party which challenges the validity the action taken against its workman failed to appear and file its claim statement and to lead evidence challenging the validity of the impugned action the dispute referred for adjudication cannot be answered in favour of I party workman and urged to reject the reference.

4. As already adverted to by me above having regard to the material placed on record by the management through MW 1 a finding being given relating to the Domestic Enquiry as fair and proper when the I party failed to appear inspite of service of notice on three occasions and to file written statement/claim statement challenging the validity of the impugned action as held in the decision relied on by the learned advocate for the II party I have no reason/basis to come to a conclusion the action being illegal or unjust. In other words the I party since failed to file claim statement and to lead evidence challenging the validity of the impugned action there is no reason to interfere in the action taken against its workman. In the result, I arrive at the conclusion of rejecting the reference and accordingly I pass the following

ORDER

Reference is Rejected holding that there is no reason to interfere in the action of the management of Vijaya Bank in imposing punishment of reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect on Sh. Pramod Kumar Shori under order No. PER:IRD:CHG:AIG:3602:2005 dated 22-09-2005 and that he is not entitle for any relief.

(Dictated to U D C, transcribed by him, corrected and signed by me on 29th October 2012)

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

List of witnesses :

MW I - Sh. M Jagan Mohan, Enquiry Officer

WW I - Nil

Documents exhibited on behalf of the Management :

Ex M-I - Charge Sheet dated 29-09-2004 issued to the First Party.

Ex M-2 - Reply dated 14-10-2004 of the first party.

Ex M-3 - Order dated 3-11-2004 of the second party appointing Sri M Jagan Mohan as Enquiry Officer.

Ex M-4 - Order dated 3-11-2004 of the second party appointing Sri Rakesh Vig as Presenting Officer.

Ex M-5 - Notice of enquiry dated 29-12-2004 issued by the Enquiry Officer fixing the date on 12-01-2005.

Ex M-6 - Proceedings and evidence sheets of the enquiry.

Ex M-7 - Exhibits marked on behalf of the management Ex. M-1 to M-6.

Ex M-8 -Written Arguments submitted by the Defence Representative.

Ex M-9 - Written Arguments submitted by the Presenting Officer.

Ex M-l0 -Report and Findings of the Enquiry Officer dated 28-03-2005

Ex M-11 -Letter (second show cause notice) dated 15-04-2005 issued by the management to the first party

Ex M-12 -Reply dated 7-05-2005 by the first party to the second show cause notice of the management.

Ex M-13 -Letter dated 25-08-2006 by the management proposing the punishment of "Reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect" to the first party.

Ex M-14 - Reply dated 13-09-2005 of the first party.

Ex M-15 - Order dated 22-09-2005 of the Disciplinary Authority imposing the punishment of "Reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect" to the first party.

Ex M-16 - Appeal dated 18-10-2005 of the first party.

Ex M-17 - Appellate order of Sri H Rathnakara Hegdi, General Manager, Personnel (Appellate Authority).

Documents exhibited on behalf of the I party :

NIL

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 38.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 63/2008)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/94/2008-आई आर (बी-I)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 38.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 11-12-2012.

[No. L-12012/94/2008-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 63/2008

Date of Passing Award - 2nd November, 2012

Between :

The Asst. General Manager,
State Bank of India,
Bapujinagar Branch,
Dist. Khurda, Orissa, Bhubaneswar
(Orissa) ...1st Party-Management.

And

Their workman Sri Krushna Chandra Das, Qr. No. VR-5/1,Kharvela Nagar, Unit-3,
Bhubaneswar (ORISSA) ...2nd Party-Workman.

Appearances:

Shri Alok Das, Authorized Representative ...For the 1st Party-Management

None ...For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (l) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/9412008 -IR (B-I), dated 06-10-2008 to this Tribunal for adjudication to the following effect :

> "Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Krushna Chandra Das, w.e.f. 30-9-2004 without complying the provisions of the LD. Act, 1947, is legal and justified? To what relief is the workman concerned entitled"?

2. The 2nd Party- Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 12-01-1987 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G. M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 29-10-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn reffered the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 76 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner

(Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 12-01.1987 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service' in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1990 and 1993. But he was not found suitable hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Das had allegedly been terminated in December, 1987 his claim has become stale by raising the dispute after twenty years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed :—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for 240 days as enumerated under section 25-F of the Industrial Disputes. Act?

3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating services of Shri Krushna Chandra Das w.e.f. 30-9-2004 is, fair, legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M. W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 151 Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7 /2007 is given below for comparison with the dispute in the present case -

> Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are inAnnexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 76 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present

reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-Workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 12-01-1987 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M. W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant workman was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch in December, 1987". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called tennination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2 Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination. He is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Kurshna Chandra Das with effect from 30-9-2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No.2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 39.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 83/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/103/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 39.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Union Bank of India and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/103/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 83/2011

Shri Sumik Kumar
S/o Sh. Kubari Ram,
P.O. Sisauli,
Muzaffarnagar - 251319.

. . .Claimant

Versus

The General Manager,
Union Bank of India,
Sharda Tower,
Kapoorthala Complex,
Aliganj,
Lucknow -226020.

. . .Managemen

ORDER

An industrial dispute, transferred to this Tribunal for adjudication, vide order No.Z-20019/6/2007-IR(C-II), New Delhi, dated 30-3-2011 was articulated vide award dated on 11-9-2012. Inadvertently on first page of the award, order of the strength of which reference was sent to the Tribunal was detailed as order No.12012/10/207-IR (B-II) New Delhi dated 12-2-2007 in lieu of order No.L-12012/103/2006-IR(B-II), New Delhi dated 12-2-2007.

2. Letter dated 26.10.2012 was transmitted by the Section Officer, Ministry of Labour and Employment, Govt. of India, New Delhi, wherein above mistake has been highlighted. A request has been made to make necessary correction in the award, in that regard.

3. Rule 28 of the Industrial Disputes (Central) Rules 1957 provides for correction of errors. For sake of ready reference aforesaid rule is extracted thus:

> "The Labour Court, Tribunal National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues".

4. Clerical error can be defined as an error in a document which can only by explained by considering it to be a slip or mistake of the party preparing or copying it. Literally an error is said to be "clerical" where it is made by a clerk or some subordinate agent, but actually, it means an error committed it the performance of clerical work, whether by the Court, the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. Clerical error is in the nature of an inadvertent omission or mistake. The term "clerical error" which is amendable nunc pro tunc is distinguishable from a "judicial error" which can be corrected only on review or an appeal Reference can be made to precedents in Rosamma Punnose (AIR 1958 Ker. 154) and Mansha Ram L. Jagdish Rai (AIR 1962 Punj. 110).

5. Accidental slip occurs when something is wrongly put in by an accident and an accidental omission occurs when something is left out by accident. The expression "accidental slip" as occurring in Section 152 (new) of the Code of Civil Procedure was construed by the Federal Court in Sachindara Nath Kolya (5 DLR 68), wherein it was observed as a follows:

> "It needs to be stressed that the keyword in the relevant phrase is "accidental" and it qualifies "omission" also. with the result that the procedure provided by section cannot be used to correct omission, however erroneous, which are intentional, not indeed in the sense of conscious choice, for no court, is supposed to commit an error knowing it to be such, but in the sense that the Court meant not to omit what was omitted".

6. Apex Court in Tulsipur Sugar Company Ltd. (1969 (2) SCC 100) had occasion to consider correctional jurisdiction of the Labour Court constituted under the UP Industrial Disputes Act, 1947. In that precedent the Apex Court made reference to the provisions of Section 152 of the Code of Civil Procedure and rule 28 of the Rules and announced that power of correction of error is a limited one, which can be exercised only to cases where mistake, clerical or arithmetical or an error arising from an accidental slip or omission had occurred. It was ruled therein that this power is limited only to cases where clerical or arithmetical mistake or errors arising from an accidental slip or omission have occurred.

7. After ascertaining the scope of powers of correction of errors available to this Tribunal, now it would be ascertained as to whether reference of the order as "vide order No.12012/10/207/IR(B-II) New Delhi dated 12-2-2007 in the award was on account of conscious choice of the Tribunal. Answer lies in negative. It was recorded on account of accidental mistake. This Tribunal has power to correct the accidental mistake. Accordingly, it is ordered that reference of the order on the strength of which dispute was sent to this Tribunal may be read as No.L-12012/103/2006-IR(B-II), New Delhi dated 12-2-2007, in place of order No.12012/10/207/IR(B-II) New Delhi dated 12-2-2007, where ever it occurs. Ordered accordingly. The appropriate Government may be communicated of correction, so made in the award, for publication.

Dated: 5-11-2012

Dr. R. K. YADAV, Pesiding Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 83/2011

Shri Sumik Kumar
S/o Sh. Kubari Ram,
P.O. Sisauli,
Muzaffarnagar - 251319.

. . .Workman

Versus

The General Manager,
Union Bank of India,
Sharda Tower,
Kapoorthala Complex,
Aliganj,
Lucknow, U.P. -226020.

. . . Management

AWARD

A casual daily wager was engaged by Union Bank of India (in short the bank) at its Sisoli branch, Muzaffarnagar, UP. He worked at the said branch intermittently from March 97 till 31st March 2004. When requirement for engagement of casual labour did not remain, he was not engaged any further. Aggrieved by that act, he raised a demand for reinstatement of service. When his demand was not conceded to, he raised an industrial dispute before the conciliation office. Since the bank contested his claim, conciliation proceedings failed. On consideration of failure report, so submitted by the Conciliation Officer, appropriate Government referred the dispute to Central Government Industrial Tribunal No.2, New Delhi, for adjudication, vide order No.L-12012/10/207-IR(B II), New Delhi dated 12-2-2007, with the following terms:

> "Whether the action of the management of Union Bank of India in terminating/disengaging Shri Sumik Kumar, S/o Shri Kubari with effect from 31-2-2004 claimed to have been working in Sisoli branch, District Muzaffarnagar, UP of Union Bank of India with effect from March 1997 continuously without any notice and compensation under Section 25 F, G and H of the Industrial Disputes Act, 1947 is legal and justified ? If not, to what relief concerned workman is entitled ?"

2. Claim statement was filed by Shri Sumik Kumar pleading therein that he was an employee of Sisoli branch of the bank since 1997. There was a permanent vacancy of peon in that branch, which fact is evident from letter dated 21-3-1997 written by the Deputy Manager (HR) to the Chief Manager (HR), Regional Office Lucknow, Uttar Pradesh. There was only on daftari in the said branch and as such, the claimant continuously performed duties of peon. Shri Azad Iqbal, working as peon in Sisoli branch, was deemed to have voluntarily retired on 1-2-1997 on account of his long unauthorized absence. Against that permanent vacancy, he was employed by the bank. He continuously worked with the Bank till 31-3-2004. His services were illegally terminated in violation of provisions of Section 25F of the Industrial Disputes Act, 1947 (in short the Act). No notice or wages in lieu thereof was given nor retrenchment was paid to him. He claimed reinstatement in service with continuity and full back wages.

3. Claim was resisted by the bank leading that the claimant was engaged as a casual worker as and when exigencies arose. He was never appointed against the post of peon. Branch manager had no power to appoint anyone against any post, hence it cannot be said that the claimant was appointed by the bank. Appointment in the bank cannot be made dehors recruitment rules. Claimant never worked continuously since he was engaged intermittently. Continuous service for a period of 240 days in a calendar year was never rendered by the claimant. When there was no exigency to engage the claimant, he was not engaged any further. There was no case of giving notice or pay in lieu thereof and retrenchment compensation. Claim put forth by Shri Sumik Kumar is liable to be dismissed, pleads the bank.

4. Vide order No. Z-22109/6/2007-IR(C-II), New Delhi dated 30-7-2011, appropriate Government transferred the dispute to this Tribunal for adjudication, while using its powers under section 33 B of the Act.

5. Claimant tendered is affidavit s evidence. However, he never entered the witness bos to offer an opportunity to the bank to purify contents of his affidavit by way of cross examination. It is evident that opportunity to cross examine the claimant was never granted to the bank. Therefore, affidavit of the claimant cannot be read in evidence.

6. Claimant abandoned the proceedings with effect from 15-12-2011. Neither the claimant nor his authorized representative opted to project his grievances before the Tribunal. Considering all these facts, matter was proceeded under Rule 22 of the Industrial Disputes (Central) Rules 1957, vide order dated 15-2-2012.

7. Shri Mohit Singh, Assistant Manager, tendered is affidavit as evidence and closed evidence of the bank.

8. Arguments were heard at the bar. Shri Rajat Arora, authorized representative, advanced arguments on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

9. As emerged out of the pleadings the bank presents that the claimant was engaged as a casual labour intermittently. Contra to it, claimant asserts that he was engaged by the bank in March 97 and worked there as peon. He further claims that he continuously served the bank till 31-3-2004. In response to these pendings, the bank claims that his engagement was intermittent and he never rendered continuous service 240 days or more in any calendar year. Consequently, it is evident that the parties are at an issue as to whether the claimant was engaged against a permanent vacancy and worked continuously for a period of 240 days in every calendar year or at least in preceding 12 months from the date of his alleged terminations. It is a settled proposition of law that Onus lies on the claimant to establish that he was engaged by the bank in consonance with the rules and continuously

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served for 240 days or more in preceding 12 months from the date of his alleged termination. No evidence is there over the record to conclude that the claimant was engaged by the bank against a regular vacancy and he worked continuously with the bank.

10. Claimant would be deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked in the bank for not less than 240 days. "Continuous Service" has been defined by Section 25B of the Act. Under sub-section (1) of the said Section, "continuous service for a period" may comprise of two period viz.(i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

11. It was incumbent upon the claimant to establish that he rendered continuous service of 240 days preceding 12 months from the date of his retrenchment. To establish this proposition of fact, he was under an obligation to lay some evidence before this Tribunal, either direct or circumstantial. It was for him to establish by way of positive evidence that continuous service of 240 days was rendered by him in preceding 12 months from the date of his alleged termination. There is complete dearth of evidence over this proposition. Contra to it Shri Mohit Singh projects that the claimant was engaged as a casual labour intermittently. Consequently it is announced that it has not been brought over the record that the claimant continuously worked with the bank for a period of 240 days in any calendar year or in preceding 12 months from the date of his alleged termination.

12. Section 25F of the Act projects that no workman, employed in any industry who has been in continuous service for not less than one year under the employer, shall be retrenched until he has been given one months' notice in writing, stating reason for his retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, besides payment of retrenchment compensation equal to 15 days average paid for every completed year of continuous service or any part thereof in excess of 6 months. Certain conditions are required to be followed by the employer before he proceeds to terminate services of the workman. But provisions of Section 25F of the Act comes into play only when workman renders continuous services for not less than one year under the employer. When such continuous service is not rendered, provisions of Section 25F of the Act cannot come to rescue of such an employee.

13. Here in the case, claimant has not been able to establish that he has rendered continuous service for not less than one year with the bank. Consequently provisions of Section 25F do not come into play in the matter. Giving of notice or pay in lieu thereof and retrenchment compensation was not required when continuous service for one year was rendered. Therefore it would be said that non-engagement of the claimant any further after 31-3-2004 was not violative of provisions of Section 25F of the Act. To invoke provisions of Section 25G of the Act, it was for the claimant to establish that there were other casual employees working with the bank when his services were disengaged. Rule of "last to come, first to go" would apply when there are more than one casual employee in the bank. Since the claimant has not been able to project that there was other casual employee who was junior to him, provisions of Section 25G of the Act would not come into play. Provisions of Section 25H will apply where bank proposes to engage casual labour, after disengagement of the claimant. On this aspect too, no evidence is three to establish that the bank had engaged any other casual labour after disengagement of the claim.

14. In view of the reasons detailed above, claim put forth by Shri Sumik Kumar is liable to be brushed aside. Accordingly, his claim is discarded. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 11-9-2012

नई दिल्ली, 11 दिसम्बर, 2012

का.आ.40.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/03/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/205/94-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 40 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/03/2006) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/205/94-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/03/2006 Date : 7-11-2012

Party No. 1

The Regional Manager,
Bank of India, Mul Road,
Chandrapur (MS)

Versus

Party No. 2

The Secretary,
Bank of India Workers Organisation,
542, Dr. Munje Marg, Congress Nagar,
Nagpur-440012.

AWARD

(Dated: 7th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Rajendra Bakre, for adjudication, to Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as per letter No. L-12012/205/94-IR (B-II) dated 8-12-94, with the following schedule:—

> "Whether the action of the management of Bank of India, Chandrapur in terminating the services of Shri Rajendra Dwarkanath Bakre, Cash Clerk (Cashier) by treating him as having voluntarily retired from service w.e.f. 30-11-1993 is legal and justified ? If not, to what relief said workman entitled ?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to flie their respective statement of claim and written statement and accordingly, the workman, Shri Rajendra Bakre, ("the workman" in short), filed the statement of claim and the management of Bank of India, ("Party No.1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a permanent cash clerk in the Bank on 20-1-1984 and his services were terminated due to the unholy conspiracy hatched and perpetrated by the party no.1 vide order dated 30-11-1993 and as per the order of termination, he failed to report for duty within the notice period as given in the notice dated 14-1-1991, but such claim made by party no. 1 is false, as he reported for duty on 4-2-1999, 13-2-1991 and 14-2-1991, but he was unilaterally disallowed to resume duty on all the said three dates by the party no. 1 and as such, his termination is patently on false reasons and in violation of section 25 (T) and item 5 (d) of Vth Schedule of the Act and party no. 1 also violated the provisions of section 33 of the Act, by terminating his services pending conciliation proceedings before the conciliation officer, for which a complaint under section 33-A of the Act has been flied and the claim of party no. 1 that he was unauthorisedly absent since 1-6-1988 is legally erroneous and dubious and unjustified, as he was on duty on 13-9-1988 and 29-8-1989 and on sanctioned leave from 1-6-1988 to 7-6-1988 and he was medically advised rest from 8-6-1988 to 7-7-1988 and he was deprived of livelihood from 8-7-1988 to 3-2-1991, due to resorting to colourable exercise of power by party no. 1 and from 4-2-1991 due to willful and deliberate lock-out imposed by the management and he was picked up and chosen by the management for harassment and discriminating treatment, because of personal enmity and inter union rivalry.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no.1 in their written statement have pleaded that the workman was appointed on 20-1-1984 as a permanent employee of the Bank and he ceased to be in service of the Bank in accordance with the notice dated 14-1-1991 regarding voluntary cessation of service and the workman remained unauthorisedly absent since 8th June, 1988 and the notice dated 14-1-1991 is neither illegal nor otherwise erroneous and the workman was directed by the Branch Manager to report to the Zonal Manager at Nagpur, according to the modified instructions, but the workman did not report to the Zonal Manager, Nagpur though he was given time, even after expiry of 30 days from the date of notice and the termination of the workman was not on false reason or in violation of any legal provision as alleged and there was no violation of section 33 of the Act.

The further case of the party no. 1 is that the workman remained unauthorisedly and continuously absent for more than three years and the workman filed writ petition no. 959/1990, before the Hon'ble High Court, but the Hon'ble High Court declined to admit the petition, so he chose to withdraw the said petition on 19th November, 1990 and as the workman remained unauthorizedly absent putting forward the plea of his ill health, he was directed to

appear before the Medical Board and on 11th January, 1990, he appeared before the Medical Board and was declared fit for duty and even after being informed about the result of his medical examination, the workman remained absent and continued to send merely leave applications, without bothering to enquire about the decision on the said applications and in this background, the Bank had to invoke clause XVII of the Bipartite Settlement dated 10th April, 1989 and a notice for voluntary cessation of service was therefore issued within the meaning of the aforesaid clause on 14-1-1991, directing the workman to resume his duties with satisfactory explanation of his unauthorized absence and the notice was replied by the workman stating that he was undergoing treatment for serious ailment of spondelytis and it was stated by him that the notice was not acceptable to him and requested for his transfer to Nagpur and he also showed conditional willingness to join duty at Durgapur Branch at the entire risk of his health and life, but such conditional willingness was not acceptable to the Bank and the explanation submitted by the workman itself was vague and failed to account for the absence of nearly three years and the Zonal Manager rejected the explanation of the workman and directed him to join duties at TPS Durgapur branch within 30 days of the receipt of the original notice and he was also asked to meet the Zonal Manager of the Bank personally at 11 AM on 4th March, 1991 to explain his unauthorized absence and as the workman failed to remain present, he was again asked to meet the Zonal Manager on 18th March, 1991, but he failed to do so and chose to merely write letters and make complaints and the work failed even positively to respond to the notice dated 14-1-1991 and on the expiry of the period specified in the said notice, he was ceased to be in the service of the Bank and the workman is not entitled to any relief.

4. It is necessary to mention here that an award was passed by the Presiding Officer of the Central Government Industrial Tribunal-cum -Labour Court, J abalpur (MP) on 17-3 -1999 in favour of the party no. 1 and the workman challenged the said award before the Hon'ble High Court, Nagpur Bench at Nagpur by filing writ petition no. 3156/ 1999 and the Hon'ble High Court by order dated 24-1-2001, were pleased to set aside the award and to remand back the matter for disposal afresh on merits, after giving an opportunity to the workman to cross-examine the witness for the management.

5. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claims. The workman has examined himself as a witness in support of his claim besides the workman, Shri G.K. Gururavayurappan, who was the Branch Manager of TPS Durgapur Branch of Bank of India during the relevant period has been examined as a witness on behalf of him (the workman) on his application.

One Shri Dilip Ratiramji Harnagle, a Chief Manager (Industrial Relations Officer, Zonal Office, Nagpur) has been examined as a witness on behalf of the party no. 1.

6. It is the admitted case of the parties that the services of the workman. was terminated (voluntarily retire from Bank's service), basing on clause 17 of the Bipartite settlement between the Management of the Bank and the workmen dated 10th April, 1989. Hence, for better appreciation of the matter in dispute, I think it necessary to mention the relevant portion of said clause 17 of the Bipartite settlement, which reads as follows:—

"17. Voluntary Cessation of Employment by the Employee

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following :

a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service."

7. The workman in his evidence has stated that he was on sanctioned leave from 1-6-1988 to 7-6-1988 and he was supposed to resume duties on 8th June, 1988, but as he suffered a very severe attack of spondolytis he was advised by the doctors to take rest for about one month and he sent written leave applications to the bank along with requisite medical certificates for rest, for the period from 8-6-1988 to 7-7-1988 and his leave applications were received by the bank and his ailment was so severe that if

proper treatment had not been taken, it would have resulted in permanent paralysis and as such, the doctors advised him to resume duty at Nagpur only on 8-7-1988 and to stay at Nagpur for two to three years for treatment and accordingly, he sent written application alongwith requisite medical certificate from civil surgeon to the Bank requesting to allow him to resume duty at Nagpur, but his request for transfer to Nagpur was rejected in complete defiance of Bank's own transfer Rules and though he sent several written applications for his transfer to Nagpur so that he could resume duty in accordance with the medical advice but his applications were not considered by the management. The further evidence of the workman is that he received the communication dated 14-1-1991 from the management in which he was directed to resume duty at TPS Durgapur branch within 30 days of receipt of the communication, failing which his services would be terminated and he replied to the said communication in writing on 29-1-1991 and reported for duty at TPS Durgapur Branch on 4-2-1991 and submitted his joining report to Branch Manager, but the Branch Manager intimated him that he had been instructed by the Zonal Manager not to allow him to resume duty and the Branch Manager did not allow him to resume duty, though he received and acknowledged the joining report, making endorsement on the same in his own handwriting and put the seal of the Bank and though he reported for duty within 30 days of the receipt of the bank's notice, it was the management, which did not allow him to resume duty and as such, his termination is totally illegal and he is entitled to reinstatement in service with continuity and full back wages.

The assertion of the witness has not been challenged seriously in the cross-examination.

8. So far the evidence of Shri G.K. Gururavayurappan is concerned on perusal of the same, it is found that the same is of no help to decide the matter under consideration.

9. The evidence of Shri Dilip Ratiramji Hamagle is on affidavit. In his examination-in-chief, this witness has reiterated the facts mentioned in the written statement. He has also proved the documents, Exhibit M-XI to M-XVII. In his cross-examination, this witness has admitted that the workman remained absent from June, 1988 and he submitted application with medical certificate regarding his suffering from Lumber spondelytis and in his application, the workman had requested to allow him to stay at Nagpur for his medical treatment and the workman was referred to the Medical Board by the management for his medical examination and the Medical Board examined the workman and submitted their medical certificate and exhibit M - III is the said medical certificate and in Exhibit M-III, the Medical Board has not specifically mentioned that the workman was not suffering from Lumber spondelytis. This witness has further admitted that on 29-1-1991, the workman had given a representation to keep him at Nagpur for two years for medical treatment, on the ground of his still suffering from Lumber Spondelytis and the notice dated 14-1-1991, Exhibit M-V was sent to the workman by registered post and he cannot say the date, on which the said letter was received by the workman and the thirty days time after receipt of the said letter expired on 16-2-1992 and the letter dated 30-11-1993 issued by the Bank shows that the period of 30 days was to expire on 12-2 -1991. It is further admitted by this witness that exhibit W-4, the letter dated 5-2-1991 was issued by the Manager, TPS Durgapur Branch to Zonal Manager, Nagpur and as per the contents of Exhibit W-4, the workman had approached the Branch Manager, TPS Durgapur Branch to report for duty on 4-2-1991 at 10.55 AM and the workman was directed by the Manager to report to the competent authority and as per the letter, Exhibit W-2 , the Zonal Manager had instructed the Manager, TPS Durgapur branch, not to allow the workman to join duty in case of his coming to join duty within the stipulated period of 30 days as mentioned in the notice dated 14-1-1991 and on 9-2-1991, the workman had written the letter, exhibit M-VII to the Zonal Manager to allow him to join duty.

10. During the course of argument, the learned advocate for the workman tried to justify the action of the workman for remaining absent from duty by giving the reasons for the same in detail and the illegality committed by the management by not considering the applications of the workman for his transfer to Nagpur. It was also submitted that the workman was served with the notice dated 14-1-1991 (Ext. M-VI) regarding voluntary cessation of service by the management, in which he was directed to report for duties at TPS Durgapur branch within 30 days of the receipt of the notice or to give satisfactory explanation and the workman submitted his explanation to the notice on 29-1-1991, which was received by the Zonal Manager on 2-2-1991 and the workman also reported for duty at TPS Durgapur branch on 4-2-1991, i.e. within the notice period of 30 days, but he was not allowed to resume duty, in view of the instruction issued by the Zonal Manager in his letter dated 15-1-1991 (Ext.W-II) to the Branch Manager, TPS Durgapur Branch not to allow the workman to join duty before expiry of the period of notice of 30 days or thereafter and such facts are clearly established by the document, Ext. W-IV and as the workman was not allowed to join duty, in order to meet the Zonal Manager, the workman went to: the Zonal office in person and submitted the letter dated 9-2-1991, Ext. M -VII, but he was not allowed to meet the Zonal Manager and therefore, the order dated 30-11-1993, under which the services of the workman were terminated w.e.f. 12-2-1991 is illegal and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

11. Per contra, it was submitted by the learned advocate for the party no. 1 that on 11-1-1990, the workman was examined by the Medical Board and on examination,

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the Medical Board found the workman to be fit for duty, as per their Medical report, Ext. M-III, but despite such declaration by the Medical Board, the workman did not resume duty, sent applications for leave without bothering to inquire about the decision taken on his applications and as such, on 14-1-1991, a notice was sent to him to resume duty within 30 days of the receipt of the notice and since, the workman failed to report for duties within the stipulated period of 30 days, he was treated to have been retired from Bank services on the expiry of the notice period and there is no illegality in the order dated 30-11-1993 and it is clear from the evidence of the witness no. 2 examined on behalf of the workman that the workman did not go to TPS Durgapur Branch on 4-2-1991 to resume duties and the order of termination of the services of the workman is perfectly legal and justified, and the workman is not entitled to any relief.

12. On perusal of the materials on record including the pleadings of the parties and the evidence led by them, both oral and documentary, it is found that the party no. issued the notice dated 14-1-1991 on the basis of clause 17 of the Bipartite Settlement dated 10-4-1989. It is clear from the provisions of paragraph 17 of the said Bipartite Settlement that an employee of the Bank can be deemed to have voluntarily retired from the Bank's service on the expiry of 30 days of the date of receipt of the notice by him, only when the employee fails to report for duty within 30 days of the receipt of the notice or fails to give an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties. In this case, it is not disputed by the party no. 1 that on receipt of the notice dated 14-1-1991, the workman submitted his explanation, Ext. M-VI on 29-1-1991. It is also found from Ext. M -VI that the said explanation was received by party no. 1 on 1-2-1991, i.e. within the stipulated period of 30 days of the notice. It is also found from Ext. M-VI that the workman had categorically mentioned there in that he had neither taken any other employment or avocation and that he has no intention of not joining duties. It is also clear from the documents Ext. W-II and Ext. W-IV that the workman had gone to TPS Durgapur Branch on 4-2-1991 at 10.55 AM to report for duty, but he was not allowed to join duty as per the instruction given by the Zonal Manager in Ext. W- IV. In view of the documents Exts. W-II and W-IV, no reliance can be placed on the oral evidence of the witness no.2 examined on behalf of the workman. It is also clear from the documents, Ext. M -VII, and Ext. M -VIII that the workman submitted an application seeking advice from the Zonal Manager regarding joining at TPS Durgapur branch and to allow him to meet the Zonal Manger on 9-2-1991, but action on the said application was taken by the party no.1 only on 25-2-1991 and the workman was directed to meet the Zonal Manager on 4-3-1991 . It is clear from the evidence on record that though the workman submitted his explanation on 29-1-1991 and went to join duty to TPS Durgapur branch on 4-2-1991, as per the direction contained in Ext. M-V, he was not allowed to join duty. Hence, the deeming provision of clause 17 of the Bipartite Settlement dated 10-4-1989 is not at all attracted to the case of the workman. Therefore, the order of termination of the services of the workman passed by the party no.1 on 30-11-1993 is illegal.

13. Now, the remaining point for consideration is as to what relief or reliefs the workman is entitled to.

As the services of the workman were terminated illegally, the workman is entitled for reinstatement in service with continuity and all the consequent benefits. So far the question of payment of back wages is concerned, the workman has neither pleaded not proved that he was not gainfully employed after termination of his services. However, keeping in view the facts and circumstances of the case, I think that interest of justice will be served if payment of 50% of the back wages is paid to the workman. Hence, it is ordered

ORDER

The termination of the services of the workman as per order dated 30-11-1993 treating him as having voluntarily retired from service is illegal and as such, the said order is set aside and quashed. The workman is entitled to reinstatement in service with continuity and all the consequent benefits. The workman is entitled to get 50% of the back wages from the date of termination of his services till the date of his actual joining of service. The party no. 1 is directed to give effect to the directions within one month of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 41 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1541/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/13/2008-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 41 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.1541/2008) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh now as shown in the

Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 11-12-2012.

[No. L-12012/13/2008-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer.

Case No. I. D. 1541/2008

Registered on 16-5-2008

Shri Jatinder Iqbal Singh, S/o Sh. Mohinder Singh H.No.3547, Sector 46-C, Chandigarh.

...Petitioner

Versus

The Sr. Dy. General Manager, Indian Overseas Bank,. Regional Office, SCO No.11, Madhya Marg , Sector 7C, Chandigarh.

...Respondent

APPEARANCES

For the workman — Sh. N.K. Nagar.

For the Management — Sh. Ramesh Chopra.

AWARD

Passed on 30 May, 2012

Central Government vide Notification No. L-12012/13/2008 -IR(B-II)) Dated 5-5-2008, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Indian Overseas Bank in imposing a punishment of Dismissal from Service on Sh. Jatinder Iqbal Singh vide order No. IR:360:2004 dated 21-12-2004 issued by the Disciplinary Authority of the then Bharat Overseas Bank Limited which has now been merged with the Indian Overseas Bank is legal and justified ? If not, to what relief the concerned workman is entitled.?"

Undisputedly the workman at the relevant time was working as Clerk in the Chandigarh Branch of Bharat Overseas Bank Limited which subsequently merged with the Indian Overseas Bank. He was charge sheeted. for surreptitiously removing a packed of 100 notes of 500 denomination amounting to Rs.50,000 on 18-3-2004 from the cash cabin of the bank and keeping it in his scooter, when the cash shortage was noticed by the Senior Manager. He arranged for search of persons and belongings of the staff members and during the search of the vehicle of the staff members the workman rushed to his scooter and removed the cash from the scooter to keep it with him. This act of the workman was witnessed by the staff and on being confronted the workman admitted the embezzlement and handed over the amount to the Manager. After inquiry the workman was dismissed from service.

The workman has contended that since his appointment in the bank on 26-6-1991 till the date of the present incident he had worked to the satisfaction of his seniors. He had suffered head injury in a road accident and is still suffering from its after effects. There was no intention. of the workman of committing any fraud with the bank. In fact he had found a packet of Rs.500 denomination lying outside the cabin adjoining the cashier's cabin and due to momentary temptation he kept the currency with him for some time. He however could not find a way to tell anybody of this happening. He was so scared that he could not decide what further to do. Unfortunately in the inquiry also he could not prove his intention and he was awarded the punishment of dismissal which is disproportionate to the charge. Barring this single incident there is no adverse entry in his service record of about 13 years. In his claim statement he has challenged the fairness of the inquiry also and has prayed for reinstatement with consequential benefits.

The claim was contested by the management and it was stated the workman has admitted his guilt in two letters dated 18-3-2004 and 20-3-2004 and he was awarded the punishment after holding a proper inquiry and after giving him an opportunity of hearing. The charge against the workman is of stealing the bank's money and no leniency in awarding the punishment can be shown to the workman merely because the amount was recovered and no loss was caused to the bank. The action of the workman cannot be condoned. He had kept the cash with him for more than four hours and returned it only after cash shortage was noticed and steps were taken to search the vehicles of the staff. He is not entitled to be retained in service and he was rightly dismissed by the management.

The Tribunal ill its order dated 24-11-2009 has held that the inquiry was conducted in a proper, fair and reasonable manner.

Parties filed affidavits in support of their respective case.

I have heard the learned counsel for the parties and have, gone through the written arguments submitted on behalf of management.It is not disputed that the misconduct attributed to , the workman stands established. The only question is whether the punishment awarded to him is shockingly disproportionate to the charge. The learned counsel for the workman argued that barring this

single incident the entire record of service of the workman had been satisfactory and he indulged in the act on account of momentary temptation and there was no intention to steal the bank's money.

It is difficult to accept the argument of the learned counsel of the workman. If there was no intention on the part of the workman to steal the bank's money why he put the money in his scooter and retained it till a search was conducted ? In State Bank of India and another Vs.Bela : Begchi and another 2006 (3) SLR 184, the Hon'ble Apex Court observed that a Bank Officer is required to exercise higher standard of honesty and integrity. He deals with the money of the depositors and the customers. Every Officer/ employee of the bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion, and diligence and to do nothing which is unbecoming of a bank officer ..... It is no defence available to say that there was no loss or profit resulted in the case when the officer/employee acted without authority.

I am therefore of the view that the action of the management of bank in imposing the punishment of dismissal from service on the workman is legal and justified. Workman is not entitled to any relief. Reference is answered against him.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 42 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 922/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2012 को प्राप्त हुआ था ।

[सं. एल-12011/210/2002-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 42 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.922/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 11-12-2012.

[No. L-12011/210/2002-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 922/2005

Registered on 13-9-2005

The Joint Secretary. Vijaya Worke's Organisation, C/o Vijaya Bank, Sector 17-B, Chandigarhj'

...Petitioner

Versus

The Dy., General Manager, Vijaya Bank, Regional Office, Vijaya House, 3rd Floor, 17B.K Rd., New Delhi.

...Respondent

APPEARANCES

For the workman : Sh. Pankaj Maini.

For the Management : Sh. Ashok Jagga.

AWARD

Passed on November 29, 2012

Central Government vide Notification No. L-12011/ 210/2002-IR (B-II)) Dated 17-3-2003, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2A) of the Industrial Disputes Act, 1947 (herein after referred to as'Act') has referred the following Industrial dispute for adjudication to this Tribunal :—

> "Whether the action of the management of Vijaya Bank in withdrawing the special permanent Driver's allowance drawn by Sh. Ram Dutt Joshi, Driver-cum-Peon, without complying with the provisions of Section 9A of the ID Act is legal and justified ? If not, what relief the said workman is entitled ?"

Berefting the argumentative part, the case of the workman as put in, in the claim statement is that he had been appointed and had been working on the post of Driver-cum-Peon in the bank since 1-4-1975. In the last he had been transferred to the SCP Branch, Chandigarh by Assistant General Manager vide order dated 30-4-2001 due to reorganization of the controlling office. The respondent No. 2 DGM, however, again issued the transfer orders of the petitioner vide its reference dated 30-8-2001 transferring him to SC PB, Chandigarh to work there as Peon. The DGM ignored the fact that the workman had already been transferred to the same branch in April 2001 and had been working there as Driver-cum-Peon. Subsequently, the Assistant General Manager vide order dated 1-9-2001 unilaterally withdraw the special allowance admissible to the workman under the provisions of the BPS as Driver without affording an opportunity to him to represent against that order. According to the workman he was getting the special pay by working as Driver with different branches of the respondent-bank since his joining as Driver-cum-

Peon with the bank. He was getting Rs. 923 per month as special allowance for discharging the duties of the Driver with respondent-bank. He was afforded no opportunity to show cause against the withdrwal of special allowance admissible to a Driver. The bank did not act upon his representation either. The act of the bank in withdrawing the allowance of the workman is illegal, unjust, unlawful and against the provisions of Bipartite Settlement.The workman has further alleged that he has been discharging the duties of Driver till today and the SC PB, Chandigarh where the workman is posted has two cars bearing Registration No.CH-0122-3484 and CH-01H-8953. The workman however was not allowed to make entries in the logbook. However other similarly situated employees who were appointed as Driver-cum-Peon but who are not working as Driver are still getting special allowance for the said post of Driver and one of such employee is Balwinder Singh posted at Barakhamba Road, New Delhi. Workman as also stated that earlier also the bank had arbitrarily withdrawn the special allowance of another employee also who was working as Driver-cum-Peon but after the service of demand notice they had admitted to have withdrawn the allowance wrongly and had restored the same to the workman. He has annexed Annexure P12 to his claim statement in this regard. He has submitted that the withdrawal of special pay as applicable to Drivers post has caused serious prejudice to him, besides huge financial loss affecting even his superannuation benefits. The special pay is an integral part of the pay and allowances attached to the post of Driver, hence, the bank-management cannot withdraw the special pay unilaterally for no fault of the workman. He has prayed for the grant of his special allowance withdrawn by the management arbitrarily in violation of the provisions of the Bipartite Settlement.

Management contested the case. According to the management workman had been appointed as Driver-cum-Peon but in the appointment letter it was clearly mentioned that he would be entitled to Driver allowance for the period for which his services are utilized as the Driver, However when the service of the workman as Driver were not required by the bank he was to work as Peon in which case he would not be paid Driver Allowance. The management had given clear-cut intelligible and unambiguous appointment letter giving option to the workman to accept the same and join or otherwise not to join. Workman had opted to join the same on the terms and conditions of the appointment letter. He therefore is now estopped from challenging the terms and conditions of the appointment letter; Vide order dated 30-4-2001 the workman had been deputed to SC PB, Chandigarh due to abolition of Regional Office, Chandigarh in the year 2001. He was subsequently transferred by DJM vide order dated 30-8-2001 to work as Peon in SC and PB, Chandigarh; and the AGM, RO Delhi vide letter dated 1-9-2001 had only clarified to the Branch Manager, Chandigarh that the workman is not eligible to draw the special allowance applicable to Drivers. Letter dated 1-9-2001 is only by way of clarification and not by way of an order withdrawing the special allowance. The bank has further stated that the impugned order dated 1-9-2001 refers only to the current assignment of the workman and not with regard to his future service in entirety. The bank may post him as Driver in his next assignment or may utilize his services as Driver in his current assignment too if service exigencies so warrant. The bank had disputed the statement of the workman that his services are being utilized by the bank as Driver or driver allowance is being paid to an employee who was not performing the duties of the Driver. It has been specifically pleaded that the alleged employee is actually performing the duties of the Driver and accordingly he is getting the Driver Allowance. According to the management it has not withdrawn any allowance or facility as alleged. Reference of Annexure P12 is wholly misconceived and the document itself is unintelligible. There is no violation of Section 9A of the ID Act and the workman is not entitled to any relief.

A replication was filed on behalf of workman to say that he is still doing the duty of Driver but is not allowed to fill the logbook and the bank appointed another Driver on contract basis against the workman just to harass and humiliate the workman. It was further pleaded that the bank has opened a Regional Office in Chandigarh and therefore the services of workman are still in need.

It will be seen that in replication the workman in addition to rebutting the contentions made in the written statement has asserted new facts which could have been added in the claim statement by way of amendment and could not have been introduced through a replication. As after replication the management has no occasion to rebut the newly alleged facts. The new facts alleged in the replication. therefore are not worth-consideration.

In evidence the workman examined himself and one Anil Kumar Sharma Regional Treasurer, Vijay Bank Workers Organization while on behalf of management statement of Kamal Narain Saini was recorded. Parties relied on certain papers also.

I heard the, learned counsel for the parties and perused the evidence on record.

It was argued on behalf of the workman that the workman had been appointed on the post of Driver-cum-Peon and he served the bank more than 26 years as Driver. Withdrawal of special allowance at this stage is clear violation of the Bipartite Settlement. In this regard the learned . counsel referred Clause 5.5, 5.6 and 5.9 of the Bipartite Settlement. According to him as per Clause 5.5 where a workman falls within more than one category he shall be entitled to receive the special allowance at the highest rate applicable to him and Clause 5.6 provides that the special allowances prescribed above are intended to commensu rate a workman for performance of discharge of

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certain additional duties and functions acquiring greater skill or responsibility over and above, the routine duties and functions of a workman in the same cadre, Further Clause 5.6 provides that it would however not be necessary that a workman shall continue to perform such duties or discharge such functions at the time in order to be entitled to such allowance. Clause 5.9 provides that a workman will be entitled to a specific allowance only so long as he is incharge of such work or the performance of such duties which attract such allowances. Whether a workman can be asked to cease to do such work or discharge such duties and consequently cease to draw such allowance will depend on the terms of his employment.

The learned counsel argued that the workman was discharging the duties of Driver since his date of joining, his joining on the Post of Driver becomes permanent instead on the post of Driver-cum-Peon. The special duty of Driver requires greater skill over and above the normal duties and as per Clause 5.5 he is entitled to receive the allowances at highest rate applicable to him.

The learned counsel next argued that as per law laid down by the Apex Court and the various High Courts of India where an employee has been getting an allowance for many years and his services are still required, the allowance/benefits he is getting, cannot be withdrawn. The learned counsel also argued that payment of such allowance of Driver was the part of the service condition of the workman and cannot be stopped without following the procedure laid down in Section 9A of the Act. The learned counsel also referred certain judgments of the Apex Court in support of his arguments.

The learned counsel for the management drew my attention to the appointment letter filed by the workman as Annexure P1. It provides that if the services of the workman as Driver are not required by the bank, he has to work as Peon in which case he will not be paid Driver allowance.The learned counsel argued that as long as the management needed and utilized the services of the workman as, Driver, he was paid the special allowance. The duties of workman as Driver are not being utilized currently, the existence of cars per se does not enable the workman to claim the allowance until and unless he is posted to work as Driver and it is wrong to allege that the workman has been discharging the duties of Driver but is not allowed to make entries in the logbook. The workman had been getting special allowance so long as he performed the duties of the Driver; the non-payment of special allowance after his reporting at SC PB Chandigarh was on account of his non-discharging the duties of the Driver. There is no change of service conditions as alleged by the workman and there is no necessity of giving any notice under Section 9A of the ID Act. The provisions of Bipartite Settlement, referred by the learned counsel for the workman are applicable to combined designations. He has given a wrong interpretation to the referred provisions. The Desai Award and also the subsequent Bipartite Settlements have recognized the fact that a workman employed whether in the clerical or subordinate staff cadre could be required to perform more than one category of duty carrying special allowance. This is the implication of the expression 'highest' used by the Desai Award and the Bipartite Settlement to specify the rate at which special allowance is to be paid under the circumstances. It is clear from the expression used viz. 'highest'that the workman can be called upon to perform more than one category of duty carrying special allowance and in Para 5.9 it is clearly mentioned that a workman will be entitled for his special allowance only so long as he is incharge of such work for the performance of such duties which attracts allowances and whether a workman can be asked to cease to do such work or discharge such duties and consequently cease to draw such allowance will depend upon the terms of his employment Since in this case the workman had been appointed as Driver-cum-Peon as per terms and conditions specified in appointment letter Annexure P1, he cannot put forth any claim that the bank should continue to pay special allowance applicable to the Driver even after his posting and even discharging his duties as a Peon.

The learned counsel for management also argued that the impugned order dated 1-9-2001 refers to the current assignment of the workman and not with regard to his future services in entirety. The bank may post him as a Driver in his next assignmemt or may utilize his services as a Driver in his current assignment too if service exigencies so warrants. His services may be utilized as Driver even in the current assignment. The impugned order does not impose any embargo on the management and it may utilize the services of the workman as Driver in the current assignment.

The learned counsel for management disputed the correctness and applicability of .the case law referred by the learned counsel for the workman.

The parties however failed to cite the case law referred by them and the cited judgments are not available in the small and limited library of the Tribunal.

It will be seen from the appointment letter Annexure P1 that though the workman had been appointed as Driver-cum-Peon but it had been made clear to him that in case his services as Driver are not required by the bank he will have to work as a Peon in which case he will not be paid Driver allowance. The bank has not denied the existence of the vehicles mentioned by the workman and has filed the copies of logbook paper No.44 to Paper No.49 but has denied that the services of the workman as a Driver were being utilized. by the bank after the impugned order. The workman-witness Anil Kumar in his cross-examination has stated that the workman is not being paid special allowance though his services as Driver are being utilized by the bank but he has clarified his statement by saying that the workman himself had told him about it. The witness further

said that earlier the workman had been maintaining the logbook but after 30-4-2001 the workman did not maintain it as his designation had changed to Peon. There is no other evidence to support the case of the workman that even after the impugned order his services as Driver are being utilized by the bank. The copies of the log book filed by the management shows the vehicles are in the name of the officers. There is no evidence to show that the vehicles available in the concerned branch are being used by some other Driver and the services of a Driver are required in the said Branch.

It is therefore clear that the posting of the workman on the post of Peon only and non-payment of Driver allowance to him during his posting as Peon is perfectly in terms of the appointment letter Annexure P1 and no change of condition of service is involved in the case. There was no need to, serve notice under Section 9A of the Act.

The provisions of Bipartite Settlement also do not help the workman. Para 5.9 of the Bipartite Settlement clearly provides that the workman will be entitled for such allowance only so long as he is discharging the duties for which special allowance is meant and whether he can be asked to cease to do such work or discharge such duties and consequently cease to draw such allowance will depend upon the terms of the employment. The terms of employment or workman justify the order of posting him as Peon and stoppage of payment of Driver allowance.

And as it was pointed out by the learned Counsel for the management it is not necessarily a permanent engagement for the remaining service period of the workman. His services as Driver may be required by the bank any time and he may be posted as Driver-cum-Peon entitling him to the special allowance. But presently he is not entitled to any relief.

The action of the management in withdrawing the special permanent Driver's allowance drawn by the workman without complying with the provisions of Section 9A of the ID Act is legal and justified. The reference is answered accordingly against the workman.

ASHOK KUMAR RASTOGI, Presiding Officer.

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 43 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, चंडीगढ़ के पंचाट (संदर्भ संख्या 211/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/169/2003-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S.O. 43.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.211/2003) of the Central Government Industrial Tribunal-Labour Court-I, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 14-11-2012.

[No. L-12012/169/2003-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No I. D. 2 11/2003

Sh. Bhushan Lal Gupta S/o Sh. Phool Chand, 116/11, Nehru Garden Colony Kaithal (Haryana)-132027.

...Applicant

Versus

The General Manager. Punjab National Bank, Northern Zone, PNB House, Sector 17-B, Chandigarh-160017.

...Respondent

APPEARANCES

For the workman : None,

For the management : None.

AWARD

Passed on 30-10-2012

Central Govt. vide notification No.L.-12012/169/2003-IR (B.II), dated 12-12-2003 has referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Punjab National Bank Kaithal in dismissing Shri Bhushan Lal Gupta workman from service vide order dated 26-8-1989 is legal and justified ? If not, what relief the workman is entitled to ?"

2. None is present on behalf of the parties today. Workman is not ensuring his presence. It is one of the oldest Industrial Dispute and reference pending adjudication before this Tribunal since 2003. Several opportunities have been given to the workman. It is already 2.30 P.M. At this stage. I have no option otherwise then to dismiss the claim of workman in reference for non prosecution and in the absence of both the parties. Accordingly, the reference is returned as such. Let the Central Government be informed. File be consigned.

Chandigarh 30-10-2012

S. P. SINGH, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 44.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 09/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/11/2008-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S. O. 44.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 09/2008) of the Central Government Industrial Tribunal/Labour Court-II, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab And Sind Bank and their workman, which was received by the Central Government on 07-12-2012.

[No. L-12012/11/2008-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT-II, ROOM NO. 33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI-110032

ID No. 09/08

In the matter between :

Shri Virender Singh C/o Hardeet Singh
107, Ghas Mandi, Raghu Mazra
Patiala (Punjab) ...Workman

Versus

The Zonal Manager,
Punjab & Sindh Bank, 201, Soti Ganj,
Meerut, UP ...Management

AWARD

The Central government, Ministry of Labour vide Order No. L-12012/11/2008-IR (B-II), dated 01-04-2008 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab & Sindh Bank in terminating/disengaging Shri Virender Singh, son of Shri Khem Singh, employed as sub-staff at Punjab & Sindh Bank branch at Ambala Road, Saharanpur without any notice & compensation under the provisions of the ID Act, 1947 is legal and justified ? If not, to what relief the concerned workman is entitled and from which date?"

2. The case of the workman as stated in the statement of claim is that he was engaged as a temporary peon with effect from 15-10-1984 with some artificial breaks (Notional) but with effect from May, 1997 he was continuously employed at their branch office Saharanpur till 28-02-2003 when his services were illegally terminated. It is submitted that the Zonal Manager of the management bank terminated the services of the workman on the ground of irregularity but the management did not hold any enquiry nor did they serve one month's notice or notice pay in lieu of notice and compensation as provided under Section 25(F) of the ID Act, 1947. Even fresh junior hands were engaged in place of workman. That no seniority was maintained by the management before terminating his services which is void under Section 25(G) of the Act 7 read with Rule 77 of the said Act. That the work and conduct of the workman during the period he worked in the branch was quite satisfactory. That the action of the management in tererminating the services of the workman amounts to hire and fire and their action is nothing but unfair labour practice. That the workman was drawing a salary of Rs. 3850 per month at the time of termination of his services. That the workman on 31-01-2004 requested the management to reinstate him in service vide demand notice but the management did not pay any heed to his letter. According to the workman he is still unemployed after terminating of his services. The workman, therefore, has prayed for an award for reinstatement in service and regularization with efrect from 28-02-2003 with full back wages along with consequential benctits.

3. Contesting the claim of the workman, the management filed is reply in which it is submitted that his claim is fictitious and is nothing and is nothing but misuse of the process of law. By putting pressure on the bank he wants to get back door entry in the employment of the bank. His claim is also time barred and he has not worked for 240 days in a calendar year. He is not entitled to the benefit of Section 25(F) of the ID Act, 1947. He has not filed any document to show that he has been employed by the bank as a peon. No appointment letter was issued to him. He even does not claim to be engaged by the bank through Employment Exchange which is necessary for any employment in the bank. That his name is even not registered in the Employment Exchange.

4. On merits, it is submitted that since the alleged workman was not a temporary or permanent employee of the bank employed by the competent authority, therefore,

there is no question of holding any enquiry or serving any notice on him. It is denied that the provisions of Section 25(F) of the ID Act, 1947 are applicable to him. It is asserted that the claimant was not appointed on 15-10-1984. It is further denied that he was continuously in employment from May, 1997 to 28-02-2003. That since the claimant was never an employee of the bank, there was no question of his seniority. The management bank asserts that it is not indulging in any unfair labour practice. The management denies having received letter dated 31-01-2004. The management bank, therefore, has prayed for the dismissal of the claim of the claimant.

5. By filing a rejoinder the claimant has controverted the submissions made by the management bank and has re-asserted his submissions made in the statement of claim. The claimant has submitted in the rejoinder that the management had themselves put up a notice on the Notice Board of the branch for the vacant post of peon and 4-5 persons presented themselves for interview and only he was selected by the management and he had been performing his duty continuously with effect from 15-10-1984 with 2-4 artificial breaks but he continuously performed his duty with effect from May, 1997 to 28-02-2003 without any break. The claimant has asserted that during the period of his employment with the bank he was registered with the Employment Exchange. It is submitted that his termination is an industrial dispute as per Section 2A of the ID Act, 1947.

6. The parties have leaded their evidence in this case and I have gone through the same.

7. In support of his case, the workman has filed his evidence on affidavit in which he has asserted in the same way as he has asserted in his pleadings. He also filed documents along with his affidavit numbering 33 pages which have been collectively marked as Ex.WWl/l. It is asserted that the Zonal Manager of the bank instigated the senior manager of the bank to terminate his services vide letter dated 27-02-2003 on the ground of alleged irregularities and copy of the said letter has been marked as Ex. WW 1/2.

8. In his cross-examination, the claimant has admitted that he is not in possession of any appointment letter but he is in possession of letter Ex.WW 1/2 showing his dis-engagement by the bank. He has categorically denied the suggestion that he has no case and he has not worked for 240 days during the year preceding his dis-engagement.

9. In rebuttal to the above evidence, the management has examined their officer Mr. Surinder Singh as MW/1 who has filed his evidence on affidavit which is Ex -MW/1/A. In his affidavit he has stuck to the pleadings made by them in the written statement/reply to the claim of the claimant. However, in his cross-examination, Mr. Surinder Singh has stated that he does, not dispute the collectively exhibited documents Ex.WW1/1. He has also admitted that the workman never worked under him and his knowledge is derived from the record of the bank and he has no personal knowledge about the engagement of the workman in the management bank. He was given the suggestion that his affidavit is false to which he has denied.

10. I have heard the learned AR for the workman. None came to address arguments for the management bank. I have gone through the entire record.

11.It is pertinent to note in this case that MW/1 Mr. Surinder Singh, an officer of the management bank has not disputed the 33 documents collectively exhibited in this case as Ex. WW 1/1. An important document filed by the workman in this case is the letter dated 20-02-2003 written by the senior manager to the Zonal Manager of the bank. The contents of this letter takes the cat out of the bag and it clearly falsifies the stand taken by the management bank in this case that Virender Singh was never employed by them and that he was not continuously working since May, 1997. In this letter dated 20-02-2003 the senior manager has clearly mentioned that one person namely Virender Singh is working in the branch since 1997. It is also mentioned in the letter that the salary of first stage of sub-staff is being paid to him since 1997. It is also the claim of the workman that he has been continuously working in the branch since May. 1997. That assertion of his coupled with the clear cut admission of senior manager in his letter dated 20-02-2003 clearly proves the case of the workman that he had been continuously working in the branch of the bank since May,1997 till his services were terminated on 28-02-2003. Admittedly, no show cause notice of one month or salary in lieu of the notice period has been given to workman Virender Singh before his services were terminated. Further, no compensation equivalent to 15 days average pay for every completed year of continuous service was paid to him at the time of his termination which took place on 28-02-2003, though he continuously was in service of the bank from May, 1997 till 28-02-2003. No notice in the prescribed manner has been served on the appropriate Govt. regarding termination of the services of Virender Singh. Admittedly, no domestic enquiry was held. before the services of Virender Singh, sub-staff were terminated. The services of Virender Singh thus have been terminated by the managerment bank against the provisions of law. The said termination thus cannot be held to be legal or justilied. As the termination or the services or Virender Singh was neither legal nor justilied he is clearly entitled to be reinstated in service with effect from 01-01-2003 and I hold so accordingly. As he is still unemployed he is entitled to full back wages along with all consequential benefits. The award is passed accordingly and the reference sent by the Govt. of India stands disposed of.

Dated : 29-11-2012

SATNAM SINGH, Presiding Officer

4760 GI/12-30

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 45.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1 नई दिल्ली के पंचाट (संदर्भ संख्या 204/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-11-2012 को प्राप्त हुआ था ।

[सं. एल-12011/132/2005-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S. O. 45.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, 14 of 1947 the Central Government hereby publishes the Award (Ref. No. 204/2011) of the Central Government Industrial Tribunal/Labour Court-I, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 23-11-2012.

[No. L-12011/132/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 204/2011

Shri Satya Paul & ors. through,
The General Secretry,
Bank of Baroda Employees Union,
C/o BOB, 4824/24, Ansari Road,
Daryaganj, Delhi - 1100002 ...Workman

Versus

The Dy. General Manager,
Bank of Baroda,
Regional Office, DMR-II,
16, Parliament Street,
New Delhi - 1100002 ...Management

AWARD

Bipartite Settlement dated 19-10-1966 empowers the banks to appoint temporary for a period of three months against permanent posts. During that period of three months, banks are saddled with responsibility to make arrangement for filling up the vacancies permanently. Temporary employees cannot be engaged for indefinite periods. However the banks opt to appoint temporary employees and allow them to continue for a period, longer than three months, as stipulated under Bipartite Settlement referred above. Bank of Baroda (in short the bank) employed a few persons on the posts of sweeper. Their engagement continued for inordinately long periods. Bank of Baroda Employees Union (in short the union) made a claim for regularization of services of Shri Satpal, Ms. Pinky, Shri Karan Singh, Shri Rajan and Shri Pritam, claiming that they were engaged at Rampura, Ujjua, Najafgarh, Sultanpur Majra, and Karampura branches of the bank respectively from last more than 240 days. The bank opted not to concede to the demand, so made, by the union. Resultantly, union raised an industrial dispute before the Conciliation Officer. During conciliation proceedings too, the bank contested the claim. As such, conciliation proceedings, Jnto a failure. On consideration of failur report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal No.II, New Delhi for adjudication, vide order No.L-12011/132/2005-IR(B-II) dated 01-08-2006, with following terms :

> "Whether the following employees, namely, Shri Satya Paul, Rampura branch, 2. Mrs.Pinky, Ujjua branch, 3. Sh.Karan Singh, Najafgarh branch, 4. Sh.Rajan, Sultanpur Majra branch, and 5. Shri Pritam, Karampura branch are engaged by the management of Bank of Baroda in its different branches for more than 240 days against vacancies of the scale wages of sweepers? Are. their claim for regularization in bank's service justified, and if so, what relief the workmen are entitled to and from which date?"

2. Claim statement was filed by the union pleading therein that Shri Satpal, Ms. Pinky, Shri Karan Singh, Shri Rajan and Sri Pritam Singh were engaged by the bank in Rampura, Ujjua, Najafgarh, Sultanpur Majra and Karampura branches respectively.

They served the bank for more than 240 days against vacancies of sweeper. Duties were taken from them for the whole day and they were paid wages on vouchers. Many a times, they were paid wages in fictitious names in an irregular manner. The union pleads that the bank may temporarily fill permanent vacancies for a period of three months, during which period it shall make arrangement to fill up the vacancy permanently. To keep an employee temporarily or "badly" for longer period is unfair labour practice, prohibited by the provisions of Industrial Disputes Act, 1947. The bank does not keep records of the employees engaged temporarily against permanent vacancies. Since aforesaid persons had worked for indefinite period against sanctioned posts, they are entitled to be regularized against vacancies for scale wages of sweepers. The union further pleads that an award may be passed against the bank, commanding it to regularise the

services of Shri Satpal, Ms. Pinky, Shri Karan Singh, Shri Rajan and Sri Pritam Singh as sweepers with retrospective effect from the dates of their respective engagement.

3. Demurral was made by the bank pleading that the dispute has not been properly espoused. It has also been pleaded that Shri Satpal and Shri Rajan were never engaged, even temporarily. Shri Karan Singh was engaged for 6 days only at Najafgarh branch from 09-12-2002 to 14-12-2002. Shri Pritam was engaged at Karampura branch for 7 days only, one day in 2003 and 6 days in 2004. Ms.Pinky was temporarily engaged at Ujjua branch by the bank for 152 days from 04-08-2007 to 11-08-2004. Since their engagement was made on temporary basis without following due procedure and that too by an authority not competent to recruit any person even on temporary capacity, they are not entitled to be appointed permanently. The bank further pleads that it does not have any policy to regularize contractual/adhoc/ temporary employees. It is under an obligation to fill vacancies through employment exchange. Regularization of services of a person depends upon fulfilment of eligibility criteria, viz. his qualification, experience, sponsorship through employment exchange as well as engagement against sanctioned posts. Since these pre-conditions were not fulfilled, claimants, for whom union had filed claim, are not entitled for regularization of their services. The bank projects that the claim is liable to be dismissed, being devoid of merits.

4. Vide order No.Z-22019/6/2007-IR(C II), New Delhi dated 30-03-2011, case was transferred to this Tribunal for adjudication by the appropriate Government.

5. On pleadings of the parties, following issues were settled :

(i) Whether the dispute has not acquired status of an industrial dispute for want of espousal by a union?

(ii) As in terms of reference.

(iii) Relief.

6. Affidavits of Shri Satpal and Ms. Pinky were tendered as evidence by the claimant union. On 28-12-2011 and thereafter the bank opted to abandon the proceedings. Since none appeared on behalf of the bank, hence the Tribunal was constrained to proceed under rule 22 of Industrial Disputes (Central) Rules 1957.

7. Claimant union opted not to tender affidavit of Shri Karan Singh, Shri Rajan and Shri Pritam. It was projected by the union that they do not want to raise their grievances before the Tribunal for adjudication.

8. Arguments were heard at the bar. Shri C.S. Dahiya, authorized representative, advanced arguments on behalf of the claimant union. None came forward on behalf of the bank to present facts.

9. Claimant union approached the bank for an amicable settlement of grievances of Shri Satpal and Ms. Pinky. Though none came forward from the side of the bank to unfold that claim of Shri Satpal and Ms. Pinky for regularization of their services have been accepted, yet Shri Dahiya, authorised representative of the claimant union, projects that the bank had given assurance to regularize services of Shri Satpal and Ms. Pinky. Shri Dahiya pleads that under these circumstances, the Tribunal may allow him to withdrawn the matter from adjudication. He does not want order on merits of the controversy.

10. In view of facts projected by Shri Dahiya to the effect that the bank is proceeding ahead to regularize services of Shri Satpal and Smt. Pinky, while Shri Karan Singh, Shri Rajan and Shri Pritam opted not to adduce their evidence for adjudication of their claim, there is no necessity to adjudicate the issues referred above. Claimant Union wants this Tribunal to refrain its hands from adjudication of the matter on merits. Therefore, it is emerging that the dispute between Shri Pritam and Ms. Pinky, raised through the union, stands subsided. Now, there remains no dispute on the issue of regularization of services of Shri Satpal, Ms. Pinky, Shri Karan Singh, Shri Rajan and Sri Pritam Singh. Resultantly, a 'no dispute' award is passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 09-11-2012

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 46.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, नई दिल्ली के पंचाट (संदर्भ संख्या 37/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/28/2008-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th December, 2012

S. O. 46.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 37/2008) of the Central Government Industrial Tribunal/Labour Court-II, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 07-12-2012.

[No. L-12012/28/2008-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO. 33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI

ID No. 37/08

In the matter between :

Smt. Darshana Devi,
Wife of Shri Desh Raj,
R/o C-9/300, Sultanpuri, Delhi ...Workman

Versus

The Branch Manager,
UCO Bank, Mukherjee Nagar Branch,
New Delhi. ...Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/28/2008-IR (B-II), dated 11-06-2008 has referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the action of the management of UCO Bank Dr. Mukherjee Nagar branch, Delhi-09 in terminating the services of Smt. Darshana Devi, W/o Deshraj Ex-Part Time Sweeper w.e.f. 01-04-2006 is just, fair and legal? If not, to what relief the workman is entitled to ?"

2. The case of the claimant/workman as stated in the statement of claim is that she was employed with the UCO Bank, Dr. Mukherjee Nagar branch, Delhi as a regular part-time sweeper since March, 1994. That the management was not paying her appropriate wages for which she filed an LCA No. 1/2002 under Section 33-C (2) of ID Act, 1947 and the same was adjudicated upon by the CGIT-cum-LC-II, New Delhi on 27-05-2005 and the said LCA was allowed and the management was directed to make payment of Rs. 66,473.47 to the workman within two months from the date of the order. That despite service of the order on the management, they failed to make the payment to the workman within the stipulated period and so she was compelled to file execution before the RLC, New Delhi. On receipt of the recovery warrants the management coerced the workman either to withdraw the execution or face termination of services. That during the pendency of the execution proceedings the management without any rhyme and reason terminated the services of the workman. Hence the workman has been victimized by the management with effect from 01-04-2006. That the termination of the workman from the services is absolutely against the settled law and is liable to be set aside. That the workman is unemployed since the date of her illegal termination. The workman, therefore, is entitled to reinstatement into services with all her wages and allowances due to her with effect from 01-04-2006.

3. Replying the statement of claim of the workman, the management has submitted that during the period when the branch was at old premises of Dr. Mukherjee Nagar, Delhi, the bank used to get it sweeeped on casual/day to day basis. On some days Darshana Devi swept the bank premises on casual/day to day basis at the rate of Rs. 10 daily which figure was subsequently revised to Rs. 33 per day. It is submitted that since the applicant was never employed by the management bank, therefore, the question of uninterrupted service does not arise. It is further submitted that the management bank had to shift its office to a changed location in Dr. Mukherjee Nagar, New Delhi and after that the bank never took the services of the applicant. That there was no employer-employee relationship between the management and the applicant and so under these circumstances the question of retrenchment from services of the applicant does not arise. That the senior manager is not even competent to take any decision regarding the employment/retrenchment of any person in the bank.

4. By filing a rejoinder, the applicant has asserted that from the reply/written statement of the management it is evident that there is no denial by the management regarding the LCA filed by her and also her assertion that she is a regular part time sweeper since March, 1994. Thus, she has rendered continuous service of more than 240 days. It is further submitted that her services were terminated without indicating any reasons for the same. That the workman was entitled to notice of one month or wages in lieu of the notice period but no such thing was done by the management. Further, no retrenchment compensation was paid by them and there is no compliance of Section 25(F) of the I D Act, 1947 and so her termination is void, ab-initio and the workman is entitled to a declaration for continuation of service with full back wages. The management has also not denied that LCA No. 1/2002 filed under Section 33-C(2) of the I D Act, I 947 was adjudicated upon and decided on 27-05-2005 and the management was directed to make payment of Rs. 66,473.47 to the workman within two months from the date of the order. Further, the management has also not denied that the workman is unemployed since the date of her termination.

5. The parties have lead evidence in this case and I have gone through the same.

6. The claimant has filed her evidence in this case on affidavit which is Ex. WW 1/A. She has fully reiterated what has been stated by her in her statement of claim in this affidavit. In her cross-examination Smt. Darshana Devi has admitted that she did not get any appointment letter when she was employed by the management bank. She, however, has categorically denied the suggestion that she

was never employed by the management bank. According to her she was orally told not come and she is not in possession or any document whereby her services were terminated. She has also denied the suggestion that her case is false and baseless and she is not entitled to any relief in this case.

7. In rebuttal to the above evidence, the management has filed the affidavit of Sh. Vinod Kumar Sarar: Senior Manager of the UCO bank as evidence in this case and his affidavit is Ex. MW 1/A. In his affidavit he has asserted that Smt. Darshana Devi was never employed as a regular part-time sweeper and she has never been in the employment of the management bank and there is no relationship of employer and employee between the parties. That on few occasions the claimant was hired for cleaning and sweeping work on casual/day to day basis independent of employer-employee relationship and she was paid Rs.10 per sweeping/cleaning session which was subsequently revised to Rs. 33 per sweeping/cleaning session. That the provisions of Section 25 (F) or the ID Act, 1947 are not attracted in her case. That the award/ order dated 27-05-2005 is on different issue and does not have any bearing on the present claim. The management bank has submitted that this claim has been filed with a design to extract money from the management bank and the same is liable to be dismissed.

8. In his cross-examination, Sh.Vinod Kumar has admitted it as correct that the bank premises are cleaned daily and the same is done by the sweepers. He has also admitted that sweepers both full ti'me and part time are employed in the branches. He has admitted that his affidavit is as per the record maintained by the bank and not on the basis of his personal knowledge. After having a look at the order passed by my learned predecessor on 27-05-2005 in LCA No. 1/2002, copy or which is Ex. MW1/Wl, the witness has admitted it as correct that they have implemented the said order and made the payment to the claimant vide cheque Ex. MWl/2. He was asked if any notice, wages in lieu of notice and retrenchment compensation etc. was paid to Smt. Darshana Devi at the time or termination of her services and to that he has admitted that no such thing was done as according to him there was no relationship of employer and employee between the parties. According to him, the work was taken from Smt. Darshana Devi but no appointment letter was ever issued to her.

9. 1 have heard the learned AR for the parties and have perused the entire record.

10. MW l Sh. Vinod Kumar Senior Branch Manager's admission in the cross-examination that they have implemented the order passed by my learned predecessor on 27-05-2005 in LCA No. 1/2002 filed by Smt. Darshana Devi against the UCO bank clearly shows that there is a relationship of employer and employee between the parties. If there was no such relationship how could the order, copy of which is Ex. MW1/1 have been passed by my learned predecessor on 27-05-2005. It thus does not lie in the mouth of the management bank now to say that there is no relationship of employer and employee between the parties. Smt. Darshana Devi has asserted that she was employed by the management bank as regular part-time sweeper since 1994 and there is no specific denial of the same done by the management bank in its written statement/reply to the statement of claim. This also amounts to admission on the part of the management bank that Smt. Darshana Devi was a regular part time sweeper since March, 1994 till her services were terminated on 01-04-2006. In Div. Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, JT 2008 (II) SC 128, it has been held by the Hon'ble Apex Court as under :

> "Held A workman employed on part time basis but under the control and supervision of a employer is a workman in terms of Section 2(s) of the Act and entitled to claim protection of Section 25F and he would be entitled to the benefit of continuous service under Section 25B."

11. There is no denial of the fact in this case that workman Smt. Darshana Devi was working under the control and supervision of the management bank. Smt. Darshana Devi thus was clearly entitled to the protection granted under Section 25F of the I D Act, 1947. Admittedly, no notice of one month or one month's pay in lieu thereof has been given to the workman Smt. Darshana Devi before her services were terminated. Admittedly, no compensation equivalent to 15 days average pay for every completed year of continuous service was paid to the workman at the time of her termination with effect from 01-04-2006. The termination of her services without complying with Section 25F of the ID Act, 1947 would render the order of termination void, ab-initio and thus entitling her to the declaration that her termination was not just, fair and legal.

12. In view of the above discussion I hold that the action of the management of UCO Bank, Dr. Mukherjee Nagar, New Delhi in terminating the services of Smt. Darshana Devi, wife of Shri Desh Raj ex-part time sweeper with effect on 01-04-2006 is neither just nor fair nor legal. After Holding that it is now required to be seen as to what relief the workman should be held entitled in this case. In Civil Appeal No. 7213 of 2010, Incharge Officer and Anr (Appellants) Vs Shankar Shetty (Respondent), the Hon 'ble Apex Court noticed the findings arrived at in the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr, 2009) 15 SCC 327 and held as under :

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back

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wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It would be, thus, seen that by a catena of decisions in rccent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who docs not hold a post and a permanent employee."

13. In the instant case, Smt Darshana Devi was working as part time sweeper and she was paid accordingly. Hcr servicc were terminated with effect from 01-04-2006 and now more than 6.1/2 years have elapsed sincc the date of termination of her services. In this situation, it is my considered opinion that the relief of reinstatement would not be justified and instead monetary compensation would meet the ends of justice. Accordingly, a compensation of Rs. 50,000 (Fifty Thousand) in lieu of reinstatement is granted to Smt. Darshana Devi. The management is directed to pay this sum latest within two months from the date this award becomes enforceable in law under Section 17-A of the II) Act, 1947, failing which the said payment shall be madc to the workman with interest at the rate of 9% per annum. The award is passed. accordingly and the reference sent by the Govt. of India stanlds disposed of.

SATNAM SINGH, Presiding Officer

Dated: 22-11-2012

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 47.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकासें के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 400/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/515/2000-आई आर (बी-I)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 12th December, 2012

S. O. 47.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 400/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12-12-2012.

[No. L-12012/515/2000-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Ofticer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 400/2001

Date of Passing Award -31st October 2012

Between:

The Asst. General Manager, Region -II,
State Bank of India, Zonal Office,
Berhampur (Ganjam), Orissa -760 007.

...1st Party-Management.

(And)

Their workman Shri Nabin Kumar Panda,
At. Dhobai, Po. Patapur, Via. Bhatakumarada,
Dist. (Ganjam), Orissa - 761 026.

...2nd Party-Workman.

Appearances:

Smt. S. Swain, Manager (Law).	For the 1st Party-Management
Shri Nabin Kr. Panda,	For himself the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of State Bank of India, Orissa and their workman in exercise of the powers conferred by clause (d) of sub section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. L-12012/515/2000-IR. (B-I), dated 13-6-2001 respect of the following matter:-

"Whether the action of the Management of State Bank of India, Bazar Branch, Berhampur by terminating the service of Sri Nabin Kumar Panda, Ex-Messenger without following Section 25(F) is justified ? If not, what relief the workman is entitled to"?

2.The 2nd Party-workman in pursuance of the letter of reference has filed his statement of claim alleging that he was engaged by the Bada Bazar Branch, State Bank of India, Berhampur as a temporary Messenger on 9-7-1985 and worked there till 3-12-1998 when he was terminated from service. He was being paid less wages and sometimes in different names just to create an artificial break in service which amounted to unfair labour practice. He has completed more than 240 days of continuous service. The Branch Manager of Bada Bazar Branch asked him on 3-12-1998 not to attend the Bank from 4-12-1998 as per direction of the Assistant General Manager, Zonal Office, Berhampur. The lst Party-Management ignoring his seniority has allowed junior workers named as Krushna Chandra Panda, Sudhakar Patnaik, K. Upendra Rao, R.N. Panigrahy, Bala Mukunda Padhi and Dharma Rao to continue in service having less length of service than the 2nd Party-workman. Thus the 1st Party- Management without considering the seniority and length of service of the 2nd Party-workman had retrenched him violating the principle of "last come first go" and even without complying the provisions of Section 25-F and 25-G of the Industrial Disputes Act. The termination of the 2nd Party-workman is illegal and unjustified and he is entitled to be reinstated in service with effect from 4-12-1998 with all service benefits.

3.The 1st party-Management has stated in its written statement that the 2nd Party-workman was engaged by it as a Messenger intermittently from 1985 to 1987 either as temporary or daily wage worker at its Bada Bazar Branch, Berhampur. During that period the 2nd Patry-workman had worked for 243 days at the branch. The Bank employed several other temporary employees/daily wagers whenever the need arose due to the permanent staff being on leave or for any other valid reason. Various settlements were arrived at between the management of Bank and All India State Bank of India Staff Federation to give a chance to temposary employees absorption/permanent appointment in the bank. The 2nd Party-workman to take benefit under the settlements applied for permanent absorption in the subordinate cadre. In his application he had voluntarily declared that he had worked for 243 days at Bada Bazar Branch of the State Bank of India, Berhampur. So he was called for interview under the eligibility criteria in the year 1989 along with other eligible candidates. The 2nd Party-workman however did not succeed in the interview. He was again called for interview in the year 1994 and this time he was empanelled and wait-listed at S1. No. 32 in Category-'C' on the basis of his declaration in application dated 26-4-1994. The list of wait-listed candidates lapsed on 31-3-1997 as per validity of the currency period of the agreement. Thereafter his services were discontinued. The 2nd party-workman was engaged by the branch after his name was wait-listed on daily wage basis as stop gap arrangement and lastly his services came to an end by efflux of time i.e. consequent upon the expiry of the validity period of the agreement. As such the case of the 2nd Party-workman is squarely covered tmder section 2(oo) (bb) of the Industrial Disputes Act. The 2nd Party workman had never been in continuous service of 240 days during a period of 12 calendar months preceding the date with reference to which calculation is to be made. In view of the above, compliance of the provisions of Section 25-F of the Industrial Disputes Act is not required. Therefore he is not entitled to the relief of reinstatement with back wages. The allegation of unfair labour practice is denied.

4. In his rejoinder the 2nd Party-workman has reiterated that he was paid temporary messenger's scale through cheques from 9-7-1985 to 1-2-1986 and from 1987 to 1988 and on daily wage basis through vouchers from 2-2-1986 to 31-12-1986 and from 1988 to 1990. He was paid daily wage scale and temporary messenger's scale both through cheques from 1990 to 31-5-1997 and was paid in cash from 1-6-1997 to 3 -12-1998 from contingency fund. Thus he was in continuous service from 9-7-1985 to 3-12-1998.

5. On the pleadings of the parties following issues were fiamed:-

ISSUES

1. Whether the reference is maintainable ?

2. Whether the action of the management of State Bank of India, Bazar Branch, Berhampur by terminating the service of Shri Nabin Kumar Panda without following Section 25-F is justified ?

3. If not, to what relief the workman is entitled ?

6. The 2nd Party-workman Shri Nabin Kumar Panda has examined himself in evidence as W.W.-1 and relied upon documents which are marked as Ext.-1 to Ext.-12.

7. The 1st Party-management has examined Shri Hemant Kumar Mohanty, Branch Manager of the Berhampur Bazar Branch, Berhampur as M.W.-1 and relied upon documents marked as Ext.-A to Ext.-N.

FINDINGS

ISSUE NO.1

8. This issue relating to maintainability of the reference does not seem to have been seriously pressed by the 1st Party Management as it has not stated anything in this regard in its first witten statement nor in the written note of argument. In the consolidated written statement subsequently filed the maintainability of the reference has

been challenged on the ground of omission of the alleged date of termination in the statement of claim, but this contentiorn falsified from the allegations made in Para-10 and 11 of the statement of claim wherein it has been stated that the Branch Manager of Bazar Branch, State Bank of India, Berhampur had asked the 2nd party-workman not to attend the service from 4-12-1998 which apparently means that the services of the 2nd Party-workman were dispensed with from 4-12-1998. No other ground on the plea of the maintainability of the reference has been raised either in the written statement or in the written note of argument. Hence, it cannot be held that the reference is not maintainable. The reference is well maintainable in view of the pleadings of the parties which constitute an industrial dispute giving rise to the presence reference. Therefore, this issue is decided against the 1st Party-Management.

Issue No. 2

9. In order to prove the action of the management of State Bank of India, Bazar Branch, Berhampur in terminating the services of the 2nd Party-workman without following the provisions of Section 25-F of the Industrial Disputes Act as invalid and unjustified the 2nd Party- workman has to first establish that he had rendered at-least 240 days continuous and uninterrupted service under the 1st Party-Management during a period of 12 calendar months from the date of his alleged termination. The contention of the 2nd Party-Workman is that he was appointed as a temporary messenger with effect from 9-7-1985 and that he had worked with the Management till 3-12-1998 from that date. He had thus completed more than 240 days of continuous service during that period. In his oral evidence he has deposed that he joined the service on 9-7-1985 and worked continuously till he was refused employment on 4-12-1998. In support of his claim he has filed photostat copies of several papers marked as Ext.-2 to Ext.-11/1. Out of which Ext.-2, 2/1, 3, 3/1,10,10/1,11 and 11/1 are not in the name of the 2nd Party-workman, Shri Nabin Kumar Panda, but in the name of some other person for which his explanation is that he was engaged at times in different names just to create an artificial break in service. But his explanation cannot be accepted for want of supporting and some other credible evidence. The other documents do not go to prove that the 2nd Party-workman had rendered continuous and uninterrupted service of 240 days during a period of 12 calendar months preceding the date of his alleged termination. The statement of work alleged to be done on daily wages by the 2nd party-workman has not been signed by any authorized signatory of the 1st Party-Management. The certificate of temporary service granted by the Management showing 243 days work done by the 2nd Party-workman from 1-1-1985 to 31-12-1987 shows that only 243 days work was done by the 2nd Party-workman during a peiod of three years commencing from 1-1-1985 and ending on 31-12-1987. This was also shown in the Bio-data submitted by the 2nd party-workman to the Management while applying for permanent absorption in the Bank. The 2nd party-workman has admitted in his cross examination that he omitted the other days as because the management did not give him certificate for those days. There is no case of the 2nd Party-workman that he was given appointment or engaged for an indefinite or continuous period. His appointment might have been time bound as is reflected in Ext.-8 filed by him. All this goes to negate any presumption that he was appointed or engaged continuously through-out the period without any break. Also otherwise there is no proof that he has rendered continuous service for 240 days under the 1st Party-Management during a period of 12 calendar months preceding the date of his alleged termination or in any year of service preceding the date of termination.

10. It is an admitted fact that the 2nd Party-workman appeared in the interview twice for permanent absorption in the service, but he could not get through in the first attempt and could not be absorbed in the second attempt due to expiry of the panel. He had filed O. J. C. in the Hon 'ble High Court of Orissa, which was dismissed along with other O.J.Cs by joint order. S.L.P. filed against that order was also dismissed by the Hon'ble Supreme Court. Therefore he has no right to be reinstated in service which was justly and within the right was terminated by the 1st Party-Management. Since the 2nd Party-workman has failed to prove that he had rendered 240 days continuous service under the 1st Party-Management preceding the date of his alleged termination, the 1st Party-Management was not required to follow the provisions of the Section 25-F of the Industrial Disputes Act, 1947 in his case. This issue is thus decided against the 2nd Party-workman and it is held that the action of the 1st Party-Management in terminating the service of Shri Nabin Kumar Panda without following the provisions of Section 25-F is justified.

Issue No. 3

11. In view of the findings recorded above the 2nd party-workman is not entitled to any relief.

12. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 48.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 65/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/98/2008-आई आर (बी-I)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 12th December, 2012

S. O. 48.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12-12-2012.

[No. L-12012/98/2008-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar

Industrial Dispute Case No. 65/2008

Date of Passing Award - 8th November, 2012

Between:

The Asst. General Manager,
State Bank of India, Bapujinagar Branch,
Dist. Khurda, Bhubaneswar,
(Orissa)

...1st Party -Management

(And)

Their workman, Sri Dandadhar Sahoo,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar (Orissa)

...2nd Party-Workman

Appearances:

Shri Alok Das, Authorized Representative	...	For the 1st Party-Management
None	...	For the 2nd Party-Workman

AWARD

The Govenment of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/98/2008 - IR (B-I), dated 6-10-2008 to this Tribunal for adjudication to the following effect :

"Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Dandadhar Sahoo, w.e.f. 30-9-2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? To what relief is the workman concerned entitled?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger' on 29-1-1987 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He, therefore, brought the matter into the notice of the C.G. M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 27-10-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central) Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 10 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-Workman that he had joined the Bank on 29-1-1987 and he was discontinued

from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1990 and 1993. But he was not found suitable hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O. J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Sahoo had allegedly been terminated on 3-8-1998 his claim has become stale by raising the dispute after nine years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:-

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified ?

2. Whether the workman has worked for 240 days as enumerated under Section 25-F of the Industrial Disputes Act ?

3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating services of Shri Dandadhar Sahoo w.e.f. 30-9-2004 is fair, legal and justified ?

4. To what relief is the workman concerned entitled ?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as MW-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No.7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case -

> "Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified ? If not, what relief the workmen are entitled to?"

8. The name of the 2nd party-workman appears at Sl. No.10 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7 /2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25- H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date

of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 29-1-1987 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that, "The disputant workman was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and unintrrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that, "In fact the workman left working in the Branch since 3.8.1998." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee has not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party, Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Dandadhar Sahoo with effect from 30-9-2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 49 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (आई डी संख्या 41/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था ।

[सं. एल-20012/3/2006-आई आर (सी-I)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 12th December, 2012

S.O.49.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2006) of the Central Government Industrial Tribunal-cum-Labour Court-1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management M/s. BCCL and their workman, which was received by the Central Government on 12-12-2012.

[No. L-20012/3/2006-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act.

Ref. No. 41 of 2006

Employer in relation to the management of Loyabad Colliery under Sijuya Area of M/s B C C L.

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K.Verma, Advocate

For the workman : None

State : Jharkhand. Industry : Coal.

Dated 21-11-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Loyabad Colliery under Sijua Area of M/s. B.C.C.Ltd. in denying employment to Shri Khudi Ram manjhi the dependent son of Late Kista Manjhi is justified and legal ? If not, to what relief is Sri Khudi Ram Manjhi the dependant son of Late Kista Manjhi entileld ?"

Due notice has been served on the parties. Claim statements and from the both sides received. But rejoinder has not been filed by the workman though 8 adjournments have been given. Finally after the joining of the present Presiding Officer. Further registered notice was issued to the union to represent the workman, but none turnup . It seems the workman/Union lost interest to proceed with the case is felt not to linger the case any further.

Hence No Dispute Award is passed. communicate to Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 50.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (आई डी संख्या 102/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था ।

[सं. एल-20012/32/1991-आई आर (सी-1)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 12th December, 2012

S.O. 50.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 102/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 12-12-2012.

[No. L-20012/32/1991-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act.

Ref. No. 102 of 1991.

Employer in relation to the management of Moonidih Colliery/Project of M/s. BCCL.

AND

Their workmen

Present: Sri Ranjan Kumar Saran, Presiding Officer.

Appearances:

For the Employers : Sri D. K. Verma, Advocate.

For the Workman : None.

State: Jharkhand. Industry : Coal.

Dated . 22-11-2012.

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub- section (2A) of Section10 of the Industrial Disputes Act 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of moonidih Project/Colliery of M/s. Bharat Coking Coal in dismissing the workman Sri Bajrang Ram, Dumper driver Vide their order No.694 dt. 19-3-90 is justified ? If not, to what relief is the workman entitled ?"

Both parties noticed. Claim statements received for both sides. Evidence on preliminary enquiry taken as it is a case of dismissal. Preliminary enquiry held proper.Not challenged in higher forum. Case lingered since more than 20 years. After joining Undersigned Presiding Officer. Notice issued to the parties representative of management appeared workman remained absent in spite of registered notice. It appears that that workman has no interest.

Hence, No Dispute Award Passed. Communicate to Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 51.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या

111/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था ।

[सं. एल-20012/73/1991-आई आर (सी-I)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 12th December, 2012

S.O. 51.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 111/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 12-12-2012.

[No. L-20012/73/1991-IR (C-I)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act.

Ref. No.111/91

Employer in relation to the management of Ghanoodih Colliery M/s. Bharat Coking Coal Ltd.

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer.

Appearances:

For the Employers : Sri D.K.Verma, Advocate

For the workman : None

State : Jharkhand. Industry : Coal.

Dated 20-11-2012.

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Ghanoodih Colliery M/s.Bharat Coking Coal Ltd. in dismissing Shri Ram Prit Gwala with effect from 23-2-1990 is justified ? If not, to what relief is the workmen entitled ?

Both parties noticed. Claim statement received for both sides. Evidence on preliminary enquiry taken as it is a case of dismissal. Preliminary enquiry held proper. Not challenged in higher foram. Case lingered more than 20 years. After joining of the undersigned P.O. Notice issued to the parties. Representative of management appeared. Workman remained absent in spite of registered notice. It appears that workman has no intress in the case .

Hence No Dispute Award is passed. Communicate to Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 52.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई. सी. आई. सी. आई. बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 18/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/37/2010-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 12th December, 2012

S.O. 52.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 18/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of ICICI Bank Ltd. and their workman, which was received by the Central Government on 12-12-2012.

[No. L-12012/37/2010-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, 30th November, 2012

Present :

A. N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 18/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of ICICI Bank and their Workman)

BETWEEN

Sri S. Ramanathan : 1 st Party/Petitioner

4760 GI/12-33

Vs.

1. The Chief Manager : 2nd Party/1st Respondent
ICICI Bank Towers
Plot No. 24, South Phase
4th Floor, West Wing, Ambattur
Industrial Estate
Chennai-600058

2. The Managing Director : 2nd Party/2nd Respondent
ICICI Bank Ltd.,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai-500051

Appearance :

For the 1st Party/Petitioner : M/s. Balan Haridas, Kamatchi Sundaresan, Advocates

For the 1st & 2nd Party/ Management. : M/s. S. Ramasubramaniam & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/37/2010-IR (B-1) dated 8-3-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of ICICI Bank Limited in terminating the services of Sri S. Ramanathan, Ex-Clerk vide their order dated 25-6-2009 without conducting any enquiry, is legal and justified ? To what relief the workman is entitled ?

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 18/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The averments in the Claim Statement briefly read as follows :

Petitioner who had joined the services of Bank of Madura on 23-1-1980 as a Clerk which merged with Respondent Bank during the year 2000 whereupon the petitioner on absorption by the Respondent Bank and while was working under the Respondent had to avail leave from 4-9-2006 on medical certificates owing to ill-health following a serious heart attack. The last of the leave applications was on 17-6-2009, upon which the Bank by its order dated 25-6-2009 discharged the petitioner on the ground of continued ill-health without notice or enquiry in the guise of discharge on the ground of continued ill-health, which cannot be resorted to. Petitioner was all set to recover and continue his employment. Thereupon petitioner informed Bank that he is willing to resign requesting to pay pension under the Pension Regulations. Respondent replied on 29-9-2009 informing reluctance to reconsider. Petitioner also informed Respondent regarding encashing the cheque for Rs. 87,690 sent with order of discharge as being without prejudice to his challenge to the discharge. Respondent cannot discharge his service by stroke of its pen. Petitioner had rendered 26 years of unblemished service. No notice, notice pay or compensation was given. The discharge would amount to retrenchment. Discharge is violating Section 25F as well as Section 25G and 25H of the ID Act. While on Medical Leave he cannot be discharged by wiping out his service and depriving pension. Discharge is illegal. Bank had not referred the petitioner to any Medical Board before discharge. Respondent arbitrarily concluded the petitioner to be no longer able to work. Petitioner's leave was sanctioned after taking into account his statement. All leave was on Medical Certificate. Allegation as if petitioner had absented himself is without substance. Respondent extended the reimbursement of medical expenses as part of service condition and not under charity. During the entire 26 years he was fit to do the work he was doing. Ailment of petitioner was a temporary phenomenon which requires some treatment. He was not put on notice that his services are going to be terminated on the ground of continued ill-health, in which case he would have submitted himself to medical fitness and obtained medical certificate. The action is violative of principles of natural justice as well. He has been without employment and is suffering. He has not been gainfully employed thereafter. He is to be reinstated with full back wages, continuity of service and all other attendant benefits.

4. Counter Statement averments bereft of unnecessary details are as follows :

Petitioner suffers from numerous ailments such as Cardiac Disease and Hypertension affecting his ability to work. He had availed leave for nearly 3 years between 4-9-2006 till date of his discharge i.e. 25-6-2009. The details of 58 spells of leave sanctioned by the Respondent are herein stated. Apart from that on 17-6-2009 petitioner applied for further leave. Due to his continued absence and no sign of his condition improving and his returning to work Respondent was compelled to discharge him. Cheque for Rs. 87,690 dated 25-6-2009 encashed by him was his salary in lieu of notice period. The dispute raised having ended in a failure report the reference is occasioned. Termination/Discharge will not constitute retrenchment if done on the grounds of continued ill-health as held by the Apex Court. Discharge will not come under the definition of retrenchment or within the purview of Section 25F, 25G or 25H of the ID Act. Respondent had been extending full cooperation and all possible support to the petitioner as admitted. The hospital charges of the petitioner were borne by the Bank. Petitioner says in one breathe that he is ready and all set to work, on the other hand he says he is willing to resign and wants his pension. It is clear that he has no intent to contest the dispute and

that he is suffering from continuous ill-health disabling him to work. Respondent did not have to constitute the Medical Board as it was clear from the extended period of leave availed by petitioner that he could not report for work. His medical certificates and innumerable leave applications proved his disabled condition. He did not express any intention or inclination to return to work. His continued unabated ill-health and absence already caused inconvenience to the Bank. His discharge is justified. He was not discharged merely for continuous absence from duty. He was discharged for his continuous ailment. Medical expenses reimbursed to him is not under a charity. His continuous illness is not a temporary phenomenon. It is a clear afterthought to state that cheque was encashed without prejudice to his rights. Termination was under Section-2(oo)(c) for continuous ill-health. The same is justified. The dispute is not maintainable and is to be dismissed.

5. Rejoinder averments in a nutshell are as follows :

Mere absence due to cardiac problem cannot lead to an inference that petitioner cannot resume work. The burden of proving continuous ill-health lies on the Respondent which has not been discharged by referring to the Medical Board. The discharge was without any legally authenticated evidence before the employer to conclude him to be unfit. Respondent cannot say that petitioner had no intention to resume work. "Retrenchment" under the ID Act is wider to include termination for any reason. The discharge is not done in a reasonable manner. Tne discharge is void-abinitio. If discernibly the termination is as a misconduct it s a punishment disproportionate to the allegations. In that case the discretion of the Tribunal under Section-1A of the ID Act is exercisable and the punishment is to be interfered with in the interest of justice.

6. **Points for consideration are:**

(i) Whether the termination from services of Sri S. Ramanathan, Ex-Clerk without enquiry is legal and justified ?

(ii) To what relief the concerned petitioner is entitled ?

7. Evidence consists of the testimony of WW1 and Ex.W1 to Ex.W41 on the petitioner's side with no oral or documentary evidence adduced on the Respondent side.

Points (i) and (ii)

8. Heard both sides. Perused the records, pleadings, documents, evidence and written arguments on behalf of the Respondent. Reliance was placed by both sides on the decisions of the Supreme Court and High Courts in support of their respective contentions.

9. On behalf of the petitioner decisions relied on include that of :

- EME EDWARDS ST. GEORGE SCHOOL VS. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND THE MANAGEMENT OF AIR INDIA (MANU/TN/2047/2009) of the High court of Madras.

- D. KALAICHELVAN VS. UNION OF INDIA REPRESENTED BY ITS EXECUTIVE DIRECTOR (APPELLATE AUTHORITY), INDUSTRIAL RELATIONS DIVISION, CENTRAL OFFICE, VIDHAN BHAWAN , MUMBAI AND ANOTHER (CDJ-2012-MHC-3914) OF HON'BLE HIGH COURT OF MADRAS.

-BISRA STONELIME CO. LTD. VS. THEIR WORKMEN (1992-1-LLN-99) OF THE HON'BLE HIGH COURT OF ORISSA

- MADURAI MILLS CO. LTD. VS. MEENAKSHI AMMAL (1963-LLJ-VOL. I-1) OF THE HON'BLE HIGH COURT OF MADRAS

- SOMASUNDARAM VS. LABOUR COURT, COIMBATORE AND ANOTHER (2010-4-LLN-237) OF THE HON'BLE HIGH COURT OF MADRAS

10. On behalf of the Respondent reference was made to the case of

-THE WORKMEN OF BANGALORE WOOLLEN, COTTON AND SILK MILLS CO. LTD. VS. THE MANAGEMENT (MANU-SC-0412-1962) OF THE APEX COURT

- J.B. KUMAR VS. SECRETARY, LABOUR AND ANOTHER (MANU-DE-0268-2008) OF THE HON'BLE HIGH COURT OF DELHI

- HINDALCO INDUSTRIES LTD. VS. LABOUR COURT, VARANASI AND ANOTHER (2001-9-SCC-178) OF SUPREME COURT

- RAMASAMY MURUGESH VS. SRI S.G. BHONSALE, THE THEN PRESIDING OFFICER, 5th LABOUR COURT AND CONSOLIDATED PNEUMATIC TOOLS CO. INDIA LTD. (MANU-MH-0306-2005) OF THE HON'BLE HIGH COURT OF BOMBAY AND

- THE DECISION IN EME EDWARDS CENTRAL SCHOOL VS. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND THE MANAGEMENT OF AIR INDIA (MANU/TN/2047/2009) OF THE HIGH COURT OF MADRAS.

11. The notable arguments on behalf of the petitioner are that the Respondent should have referred the petitioner for medical examination to prove his not being fit to continue to work. There is difference between an employee not reporting for duty and an employee unfit to continue in service due to continued ill-health. Decision should be co-related to the work and not on the ipse-dixit of the employer.

An objective conclusion should have been arrived at whereas here it is only a subjective conclusion. Here it is a case of retrenchment. Even if petitioner is guilty the punishment is disproportionate to the gravity of the misconduct if misconduct is attributable on the petitioner in his having been continuously absent. Hence the punishment is to be interfered with under Section-11A of the ID Act. Petitioner is also entitled to full pension. The punishment being discharge only there is no disqualification for pension. Petitioner opted to pension scheme. He had become employee of ICICI Bank with all benefits on merger of Madura Bank with it. The 4 fact is that the employer's contribution after transferring to pension fund is now denied to him.

12 . The prominent arguments on behalf of the Respondent are that Ex.W6 to Ex.W36-Medical Certificates produced by the petitioner indicated that he needed total rest and could not report for duty. They did not show that he was fit to resume duty. He never claimed to be fit to resume duty. He was not available in the Bank for nearly three years. It is not a retrenchment but is a discharge under Section-2(oo)(c) of the ID Act. Termination on the ground of continued ill-health is not retrenchment. Petitioner did not produce any fitness certificate to prove that he is fit to continue work. Therefore it is not correct to say that he should have been sent to the Medical Board to prove his fitness or otherwise to work. It is a case of discharge simplicitor under Section 2(oo). Though at a later remote point of time he may have become fit to continue to work that is not to be a guiding consideration whether he can be terminated from service or not on the ground of continued ill-health. What is for today is not relevant on the date of the impugned action. Hard facts cannot make a bad law. He was not discharged from service after the production of a fitness certificate. He was reporting himself to have been suffering from continuous ill-health. So much so no occasion of his being sent for medical board actually arises.

13. On a consideration of the various aspects of the case and rival contentions on either side I am led to the conclusion that the case on hand is more apt to be concluded as an instance of a discharge simplicitor on the ground of continued ill-health in which case no question of holding any enquiry or issuing any notice actually is called for. Section 2(oo)(c) is an enabling provision to effect termination of the service of the workman on the ground of proved continued ill-health. The decisions relied on behalf of the petitioner not appear to be squarely applicable to the facts of the present case. Those relied on behalf of the Respondent are also not squarely applicable because they deal with cases mostly covering continuity of ill-health for long durations than in the present case. Here the instance of duration of continued ill-health while is nearly for 3 years, in the decisions on behalf of the Respondent the durations are much more than that. That the Respondent should have got the petitioner referred to a Medical Board to finally decide as to he is physically fit to continue to work is an argument lacking in merits for the reason that even the Medical Certificates viz. Ex.W6 to Ex.W36 produced by the petitioner himself clearly vouchsafe the factum of petitioner being severely sick due to various ailments for which there need not be any hesitation to arrive at a conclusion that petitioner is not fit to continue to work due to his continued ill-health. Though within a span of nearly 3 years the Management was coming to the conclusion persuading his termination from service on the ground of continued ill-health, an argument cannot or be canvassed if canvassed need not be sustained to conclude that the termination is not bonafide but is casting some stigmatic to make it retrenchment. On all these considerations I am led to the inevitable conclusion that the termination from service of Sri S. Ramanathan, Ex-Clerk without any enquiry is only legal and justified.

14. Coming to the punishment I am to concede to the argument addressed on behalf of the petitioner that the punishment of discharge by way of termination from service is not proportionate to the gravity of the delinquency. The fact that he had put in more than 25 years of service entitles him for pension. Punishment is not a dismissal or removal from service but is only discharge. He has no disqualification for his pension. He is also proved to be a pension optee. He became an employee of the Respondent Bank with all rights and liabilities he has had in the Bank of Madura, the merging bank. His pension is virtually denied even after the employer's contribution having actually stood transferred to the Pension Fund. Denial of pension is therefore unjust. There is no justification in depriving his superannuation benefits to which he would have otherwise been entitled but for his termination from service on the ground of continued ill-health. So much so his termination from service by way of discharge is ordered to be modified into Compulsory Retirement so that he may become entitled to his superannuation benefits from the date on which he was discharged.

15. Resultantly the termination by way of discharge is modified and reduced in aid of Section-11A of the ID Act to Compulsory Retirement and the Respondent Management is ordered to pay his superannuation benefits from the date of discharge.

16. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30th November, 2012).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :—

For the 1st Party/Petitioner : WW1, Sri S. Ramanathan

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	23-1-1980	Appointment Order
Ex.W2	24-1-1996	Opt to pension scheme
Ex.W3	23-1-2006	Discharge Summary
Ex.W4	15-8-2006 to 23-8-2006	Travel Expenses
Ex.W5	08-4-2007	Reply notice
Ex.W6	23-1-2006	Leave application with Medical Certificte
Ex.W7	01-10-2006	Leave application with Medicai Certificate
Ex.W8	01-12-2006	Leave application with Medical Certificate
Ex.W9	01-1-2007	Leave application with Medical Certificate
Ex.W10	1-2-2007	Leave application with Medical Certificate
Ex.W11	1-3-2007	Leave application with Medical Certificate
Ex.W12	1-4-2007	Leave application with Medical Certificate
Ex.W13	1-5-2007	Leave application with Medical Certificate
Ex.W14	1-6-2007	Leave application with Medical Certificate
Ex.W15	1-7-2007	Leave application with Medical Certificate
Ex.W16	1-8-2007	Leave application with Medical Certificate
Ex.W17	1-9-2007	Leave application with Medical Certificate
Ex.W18	1.10.2007	Leave application with Medical Certificate
Ex.W19	1-11-2007	Leave application with Medical Certificate
Ex.W20	1-12-2007	Leave application with Medical Certificate
Ex.W21	2-1-2008	Leave application with Medical Certificate
Ex.W22	1-2-2008	Leave application with Medical Certificate
Ex.W23	4-3-2008	Leave application with Medical Certificate
Ex.W24	1-4-2008	Leave application with Medical Certificate
Ex.W25	1-5-2008	Leave application with Medical Certificate
Ex.W26	1-6-2008	Leave application with Medical Certificate
Ex.W27	1-7-2008	Leave application with Medical Certificate
Ex.W28	1-8-2008	Leave application with Medical Certificate
Ex.W29	1-9-2008	Leave application with Medical Certificate
Ex.W30	1-10-2008	Leave application with Medical Certificate
Ex.W31	1-11-2008	Leave application with Medical Certificate
Ex.W32	1-12-2008	Leave application with Medical Certificate
Ex.W33	5-1-2009	Leave application with Medical Certificate
Ex.W34	2-2-2009	Leave application with Medical Certificate
Ex.W35	6-3-2009	Leave application with Medical Certificate
Ex.W36	8-4-2009	Leave application with Medical Certificate
Ex.W37	25-6-2009	Order of Discharge
Ex.W38	-	Representation by the petitioner
Ex.W39	31-8-2009	Letter from the Respondent Bank
Ex.W40	29-9-2009	Letter from Respondent Bank
Ex.W41	19-10-2009	Representation by the petitioner

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 14 दिसम्बर, 2012

का.आ. 53.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरीसिन इन्जीनियर एम.ई.एस., भटिन्डा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न.-II, चडीगढ़

4760 GI/12-34

के पंचाट (संदर्भ संख्या 84/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2012 को प्राप्त हुआ था ।

[सं. एल-14012/54/2004-आई आर (डी यू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 14th December, 2012

S.O. 53.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref: No. 84/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Garrison Engineer, MES, Bhatinda Cantt. and their workman, which was received by the Central Government on 11-12-2012.

[No. L-14012/54/2004-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer.

Case No. I. D. 84/2005

Registered on 20-4-2005

Shri Iqbal Singh,. C/o Sh. Dinesh Kumar, #431, Sector 15-A, Chandigarh.

...Petitioner

Versus

The Garrison Engineer (Utility), MES Bathinda Cantt., Bathinda.

...Respondent

APPEARANCES

For the workman : Sh. Chaman Lal

For the Management : Sh. K.K. Thakur.

AWARD

Passed on 30 May, 2012

The Central Government vide Notification No. L-14012/54/2004-IR(DU)) Dated 29-3-2005, by exercising its powers under Section 10 Sub section (1) Clause (d) and Sub section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Garrison Engineer (Utility); Bathinda Cantt, Bathinda in terminating the services of Sh. Iqbal Singh S/o Sh. Nachatar Singh, w.e f. 24-2-2004 even without complying with the statutory provisions of ID, Act is just and legal ? If not, to what relief the workman is entitled and from which date ?"

The case of the workman is that he had been employed by the respondent through a contractor in May 1996 as Operator (skilled worker). After completion of 8 years of service his services were terminated on 24-2-2004 without compliance of the provisions of Section 25F of the Act. He had completed more than 240 days service in the calendar year preceding the date of termination. While terminating his services juniors were retained. His job was of regular and permanent nature and he worked continuously despite the change of the contractors from time to time. It has also been contended that the contract system adopted by the MES authority is sham and a smoke screen and upon lifting the veil it would be found that the contract system has been adopted by the MES authorities only with a view to exploit the unemployment conditions. In fact there is a direct relationship of the master and servant between the MES Authorities and the workman. He worked under direct supervision and control of MES Authority. The ultimate disciplinary control is also that the MES Authorities and the present termination is at the behest of MES Authorities being principal employer. The wdrkman has also pleaded that neither theMES Authorities nor the contractor is registered under the Contract Labour (Regulation and Abolition) Act, 1970, hence for all intents and purposes the workman is to be deemed an employee of the MES Authorities. His termination is by way of victimization and not in good faith. He has also pleaded the violation of Section 25 H of the Act but right of re-employment provided under Section 25H of the Act is not under reference. The workman has prayed for his reinstatement with all consequential benefits.

The claim was resisted by the management-respondent and it was stated that the workman was an employee of the contractor who had been given the job of manning and operation of installation. During the currency of the contract total control over the work and workman is exercised by the contractor . The workman was never fully integrated into the management because the powers namely, power to select. and dismiss, power to pay remuneration, power to organize work, and power to supply tools and materials were wholly with the contractor. No relationship of employee and employer exists between the workman and the management. Work is not of perennial nature. The job and nature of work is temporary and intermittent. The execution of the work through contractor is only a stop gap arrangement which can be changed by the Department. Thus there is no question of violation of Section 25Fof the Act by the management respondent. It was also stated that an inference cannot be drawn about the existence of relationship of employee and employer between the workman and the respondent on account of non-registration under the CL (R & A) Act, 1970.

A rejoinder to the written statement was filed by the workman.

In support of their respective cases the parties filed affidavits. Workman filed his own affidavit while on behalf of respondent affidavit of Raj Narayan and Narinder Singh, Garrison Engineers were filed.

Both the parties did not tender their affidavits in evidence and examine the witnesses. Certain photocopies of the documents were also filed by the parties but they were also not tendered in the evidence and their genuineness was not established. In fact the parties remained very casual in attending the Court proceedings. After the filing of the affidavits the workman did not appear continuously on four dates and his attendance could be procured on 7-1-2008 only after notice sent by registered, post to him. He again absented on 11-11-2010 and his authorized representative withdrew from the case.

Notice sent by registered post to workman returned-unclaimed and workman remained absent on the next date also. Similarly management failed to appear on 26-7-2010 and 30-9-2010, therefore case was ordered to proceed ex parte against management on 30-9-2010. Management continued to be absent on the next two dates also. None of the parties appeared to argue the case. I have carefully perused the evidence on record.

The question is whether the contract allegedly entered by the respondent with the contractors for manning and operation of installations is sham and there is a relationship of employee and employer between the workman and respondent.

It may be noted that the person who sets the plea of relationship of employer and employee, the burden lies on him to prove it. In the present case admittedly the employment of the workman was through contractor.The case of the workman is that though he had been employed though contractor yet for all practical, purposes he was an employee of the respondent and the contract was sham. In his another affidavit filed subsequently on 14-6-2010 he stated that work was being allotted to him and supervised by the respondent wages were also being paid by the respondent and the attendance was also being marked by the respondent. Interestingly these facts were not mentioned by him in his earlier affidavit filed on 13-4-2006. Clearly these facts are afterthought and cannot be believed. These facts are also not believable for the reason that the workman did not appear in the witness-box for cross-examination and did not summon the record. There is nothing on record to suggest that he had been recruited after due process and had been given any appointment letter by the respondent.

The Hon'ble Supreme Court in Workman of Nilgiri Cooperative Marketing Society limited Vs. State of Tamil Nadu 4-II-LLJ 253, held that no single test - be it control test ; organization test or any other test was determinative test for determining the jural relationship of employer and employee." The Hon'ble Court held that the Court is required to consider several factors which would have a bearing on the result:

(a) Who is appointing-authority ?

(b) Who is pay master ?

(c) Who can dismiss ?

(d) How long alternative service last ?

(e) The extent of control and supervision

(f) The nature of job for example whether it is professional or skilled work ?

(g) Nature of establishment the right to reject.

As stated above there is nothing to show that the workman had been appointed by the respondent. Further there is no evidence to show the payment of wages by the respondent or that the workman worked under the control and supervision of the respondent. There is nothing on record to show that the respondent has disciplinary control over the workman and has right to terminate his services.

The workman has also pleaded that neither the respondent nor its contractor are registered under the Contract Labour (Regulation and Abolition) Act, 1970 and therefore an inference should be drawn that the workman is an employee of the principle employer-respondent. This plea of the workman also is not acceptable. If there is violation of provisions of Contract Labour (Regulation and Abolition) Act, 1970 then the violators are liable to action under the said Act. The workman cannot. be given any benefit of the wrongs of the others.

It is thus clear that the workman has failed in establishing the relationship of employee and employer between him and the respondent and also that the contract between the respondent and the management was sham.

Since the respondent was not the employer of the workman, the service of the latter could not be and were not terminated by the respondent. No question of the compliance of the provisions of the I.D Act by the respondent arises. The workman is not entitled to any relief. Reference is answered against him.

ASHOK KUMAR RASTOGI, Presiding Officer

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